PLEASE TAKE NOTICE THAT Defendant MARKOU, LLC ("Markou") hereby files this Notice of Removal under 28 USC §§ 1441, 1446 and Federal Rule of Civil Procedure 81(c) to remove to this Court the above-entitled action on the following grounds:

#### STATEMENT OF FACTS ENTITLING DEFENDANT TO REMOVAL

- 1. On May 4, 2015, an action was commenced by Plaintiff Battle Creek State Bank ("Plaintiff" or "Battle Creek") in the Superior Court of the State of California in and for the County of Marin, entitled Battle Creek State Bank v. RC Ventures, LLC, a Delaware limited liability corporation, aka RC Ventures Group II, LLC, a California limited liability corporation; Mari Susanna DeMarsh, an individual; and Does 1 through 20, inclusive, Superior Court Case No. CIV1501631. A true and correct copy of the unverified Complaint ("Complaint") is attached hereto as **Exhibit A.**
- 2. On August 5, 2015, Plaintiff filed a First Amended Complaint naming additional parties with the caption then reading as Battle Creek State Bank v. RC Ventures, LLC, a Delaware limited liability corporation, aka RC Ventures Group, LLC, a Delaware limited liability corporation; Mari #1, LLC, a Delaware limited liability corporation; Mari #1, LLC, a Delaware limited liability corporation, Mari Susanna DeMarsh, an individual; Mari Susanna DeMarsh as the Special Administrator and Executor of the Estate of Michael Revels Cayton, and Does 1 through 20, inclusive. A true and correct copy of the First Amended Complaint is attached hereto as Exhibit B.
- 3. On July 21, 2016, Plaintiff filed a Second Amended Complaint now, for the first time, naming moving party Markou, LLC and some additional parties with the caption now reading as Battle Creek State Bank v. RC Ventures, LLC, a Delaware limited liability corporation, and RC Ventures Group, LLC, a Delaware limited liability corporation, and RC Ventures Group II, LLC, a California limited liability corporation; Mari #1, LLC, a Delaware limited liability corporation; Mari Susanna DeMarsh as the Special Administrator and Executor of the Estate of Michael Revels Cayton; Mari Susanna DeMarsh as the Trustee of the Revels Michael Cayton Trust, Dated August 2, 2014; Markou. LLC; Revels M.

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Cayton MD, Inc.; and DOES 1 through 20, inclusive.	A true and correct copy of the Second
Amended Complaint is attached hereto as <b>Exhibit C</b> .	

- 4. The first date upon which Markou received a copy of the operative complaint was July 31, 2016, when Markou's agent for service of process, Registered Agent Solutions, Inc., received by process server the Summons, Complaint, and Marin County Case Management Information Sheet. A true and correct copy of the Amended Summons To Second Amended Complaint is attached hereto as **Exhibit D**.
- 5. Markou filed an answer to the Complaint on July 25, 2016. A true and correct copy of the answer is attached hereto as **Exhibit E**.
- 6. Based on the allegations of the Second Amended Complaint, Markou is informed and believes that Plaintiff Battle Creek State Bank was, at the time of the filing of this action, and still is, a Nebraska banking corporation with its principal place of business in Battle Creek, Nebraska.
- 7. Based on the allegations of the Complaint, Markou is informed and believes that Defendant RC Ventures, LLC "aka RC Ventures Group LLC" was, at the time of the filing of this action, and still is, a Delaware limited liability corporation.
- 8. Based on the allegations of the Complaint, Markou is informed and believes that Defendant RC Ventures Group II, LLC was, at the time of the filing of this action, and still is, a California limited liability corporation.
- 9. Based on the allegations of the Complaint, Markou is informed and believes that Defendant Mari Susanna DeMarsh was, at the time of the filing of this action, and still is, resides in Marin County, California.
- 10. Based on the allegations of the Complaint, Markou is informed and believes that Defendant Mari #1, LLC was, at the time of the filing of this action, and still is, a California limited liability company.
- 11. Based on the allegations of the Complaint, Markou is informed and believes that Michael Revels Cayton "aka Revels Cayton" was an individual, now deceased, who at all times relevant hereto resided in the County of Marin, California until his death.

	12.	Based on the allegations of the Complaint, Markou is informed and believes that
Revels	M. Ca	syton, M.D., Inc. was, at the time of the filing of this action, and still is a suspended
Califor	rnia co	rporation.

- 13. Defendant Markou was, at the time of the filing of this action, and still is a Nevada limited liability company.
- 14. All appearing defendants Mari Susanna Demarsh, an individual; Mari Susanna DeMarsh as Special Administrator and Executor of the Estate of Michael Revels Cayton, Mari Susanna DeMarsh as Trustee of the Revels Michael Cayton Trust, Dated August 2, 2014; Markou, LLC are represented by Sedgwick LLP and have filed concurrently herewith a Consent to Removal.
- 15. All other named defendants RC Ventures, LLC, a Delaware limited liability corporation, aka RC Ventures Group, LLC, a Delaware limited liability corporation, and RC Ventures Group II, LLC, a California limited liability corporation; Mari #1, LLC, a California limited liability company and Revels M. Cayton MD, INC., a suspended California corporation, have not appeared in the action.

### **JURISDICTION**

- 16. As the appended record demonstrates, this action may be removed to this Court pursuant 28 U.S.C. § 1441(b) because this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), as there is complete diversity of citizenship between the litigants, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.
- 17. It is facially apparent from the Second Amended Complaint that Plaintiff's claims for damages exceeds the jurisdictional amount of \$75,000. (Exhibit C, Second Amended Complaint, ¶¶ 19, 24, 34, 41, 46, 51, 58 and Prayer for Relief, page 12, line 13.) (See Locket v. Delta Air Lines, Inc., 171 F.3d 295, 298 (5th Cir. 1999).
- 18. According to the complaint, RC Ventures LLC borrowed \$1,340,500.00 from Battle Creek in September 2008. The loan was made pursuant to a Line of Credit Agreement and Promissory Note between Battle Creek and RC Ventures, LLC which was personally guaranteed by Revels Cayton. RC Ventures LLC defaulted on the loan and ultimately entered into a written

	Settlement and Release Agreement in November 2011 for repayment for the total principal sum o
2	the original loan in equal monthly installments from December 2011 until full paid. The loan
3	installments were paid from December 2011 to January 2015. (Exhibit C, Second Amended
1	Complaint, ¶¶ 19, 22, 23, 24, 27, and 29.)
5	19. Revels Cayton died on August 13, 2014. (Exhibit C, Second Amended Complain
5	¶ 28.) In February 2015 payments ceased and in May 2015 Plaintiff filed suit against RC
,	Ventures LLC, RC Ventures Group II and Mari Susanna DeMarsh. (Exhibit C, Second Amended

- ¶ 28.) In February 2015 payments ceased and in May 2015 Plaintiff filed suit against RC Ventures LLC, RC Ventures Group II and Mari Susanna DeMarsh. (Exhibit C, Second Amended Complaint, ¶ 29.) Over the next year Plaintiff twice amended the Complaint to name additional parties including Markou in the latest Complaint filed in July 2016. (Exhibits B and C.)

  20. Plaintiff alleges that the action is an unlimited civil case and they seeks damages
- 20. Plaintiff alleges that the action is an unlimited civil case and they seeks damages against defendants, including Markou, for the alleged outstanding loan balance of \$1,103,552.67 which is an amount well in excess of the jurisdiction of the Marin County Superior Court unlimited civil matters. Plaintiff also seeks interest, cost incurred and attorneys' fees. (Exhibit C, Second Amended Complaint, ¶ 34.)
- 21. This removal is timely, having been made within thirty days of the service of the Summons and operative Complaint on Markou. 28 U.S.C. § 1446(b).

### INTRADISTRICT ASSIGNMENT

- 22. Assignment to this Court is proper as the action is pending in Marin County Superior Court.
- 23. The presence of Doe Defendants in this case has no bearing on diversity with respect to removal. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded. 28 U.S.C. § 1441(a).
  - 24. Markou reserves the right to amend or supplement this Notice of Removal.
- 25. All appearing defendants consent to this removal. (See Lewis v. Rego Company, 757 F.2d 66; 68 (3rd Cir. 1985).) None of the defendants contest removal.
- 26. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Superior Court of the State of California, in and for the County of Marin.

27. Pursuant to 28 U.S.C. § 1446(d), Markou has served Plaintiff with a Notice to State Court and Adverse Party of Removal to Federal Court and Jury Demand.

WHEREFORE, Defendant MARKOU, LLC hereby removes the action now pending against it in the Superior Court of California, County of Marin.

#### **DEMAND FOR JURY TRIAL**

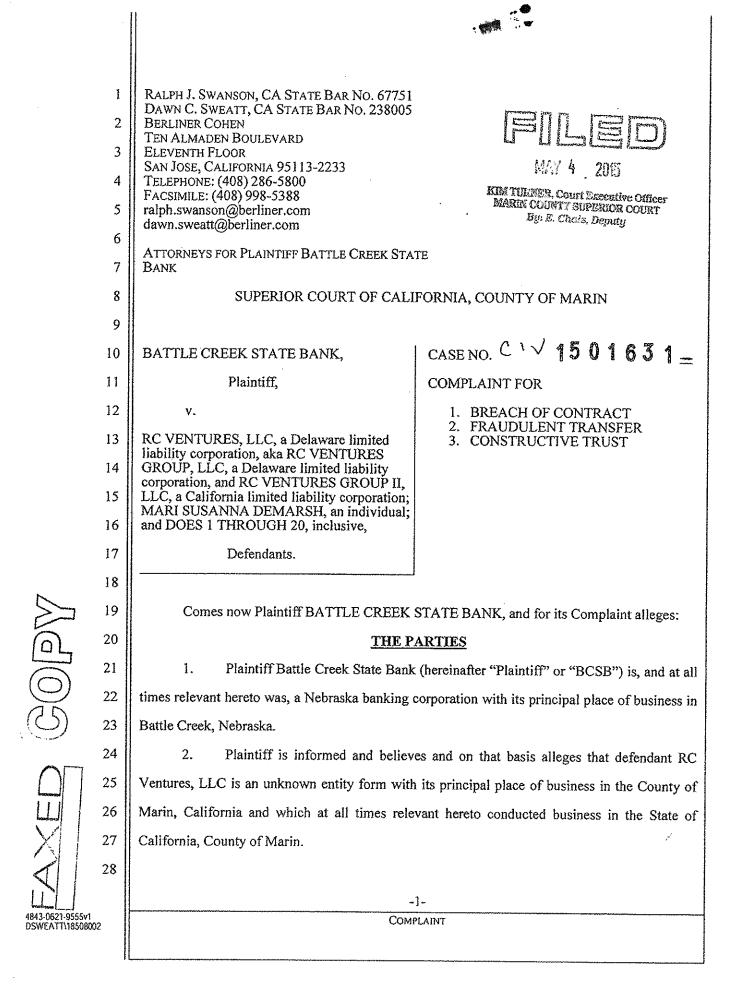
Pursuant to Federal Rule of Civil Procedure 38(b) Defendant Markou, LLC hereby demands trial by jury of all issues appropriate for jury determination.

DATED: August 30, 2016 SEDGWICK LLP

By: /s/ Eugene Brown, Jr.

Eugene Brown, Jr., Esq.
Amee Mikacich, Esq.
Sunny S. Shapiro, Esq.
Attorneys for Defendants
MARI SUSANNA DEMARSH, an individual;
MARI SUSANNA DEMARSH, as the Special
Administrator and Executor of the ESTATE OF
REVELS MICHAEL CAYTON, erroneously sued
as MICHAEL REVELS CAYTON; MARKOU,
LLC; and MARI SUSANNA DEMARSH as the
Trustee of the REVELS MICHAEL CAYTON
TRUST Dated August 4, 2014

## **EXHIBIT A**



- 3. Plaintiff is informed and believes and on that basis alleges that defendant RC Ventures Group, LLC, is a Delaware limited liability company with its principal place of business in the County of Marin, California, and which at all relevant times conducted business in the State of California, County of Marin.
- 4. Plaintiff is informed and believes and on that basis alleges that RC Ventures Group II, LLC, is a California limited liability company with its principal place of business in the County of Marin, California, and which at all relevant times conducted business in the State of California, County of Marin. Plaintiff is further informed and believes and on that basis alleges that RC Ventures Group II, LLC, is currently listed under the California Secretary of State's Business Portal web site as a suspended corporation.
- 5. Plaintiff is informed and believes and on that basis alleges that defendant RC Ventures, LLC, has also been known as and/or has done business as RC Ventures Group, LLC, or as RC Ventures Group II, LLC. (Hereinafter, RC Ventures, LLC; RC Ventures Group, LLC; and RC Ventures Group II, LLC, are sometimes collectively referred to for convenience as the "RC Entities.")
- 6. Plaintiff is informed and believes and on that basis alleges that defendant Mari Susanna De Marsh (hereinafter "DeMarsh") is, and at all times relevant hereto was, an individual residing in the County of Marin, California.
- 7. Plaintiff is informed and believes and on that basis alleges that Michael Revels Cayton, aka Revels Cayton (hereinafter "Cayton"), was an individual, now deceased, who at all times relevant hereto resided in the County of Marin, California until his death on August 13, 2014. There is a pending Petition to Administer Estate of Cayton (Marin County Superior Court Case No. 1501377), which is set to be heard on May 26, 2015, after which time leave will be sought to amend this Complaint to name the Estate of Revels Cayton as a party in this action.
- 8. The true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants named and sued herein as DOES 1 through 20, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will amend its Complaint to show their true names and capacities when the same have been ascertained. Plaintiff is informed and

believes and on that basis alleges that each of the fictitiously named Defendants is in some way responsible for the events, transactions, omissions, and occurrences referred to herein and that Plaintiff's damages as herein alleged were proximately caused by those events, transactions, omissions and occurrences. Throughout this Complaint references to "Defendants" shall mean and refer to "Defendants and each of them," unless the context specifies otherwise.

- 9. Plaintiff is informed and believes and on that basis alleges that at all times relevant hereto, Defendants, and each of them, were the agents, servants, partners or co-conspirators of each other and, in doing the things herein alleged, were acting within the course and scope of such agency, service, partnership or conspiracy.
- 10. Plaintiff is informed and believes and on that basis alleges that the RC Entities are member-managed limited liability companies that had only two members, Cayton and DeMarsh. Plaintiff is informed and believes and on that basis alleges that DeMarsh is now the only surviving member of the RC Entities.
- 11. Plaintiff is informed and believes and on that basis alleges that Demarsh and the RC Entities are the alter egos of each other. Specifically, they commingled individual and corporate funds, failed to observe corporate formalities including maintaining minutes, and failed to contribute sufficient capital to sustain the RC Entities. There lacks such a unity of interest and ownership between each of the RC Entities and DeMarsh that the separate personalities of the limited liability companies and the owners do not exist. DeMarsh and the RC Entities are jointly and severally liable for one another's debts because the failure to disregard the corporate entity would sanction a fraud or promote injustice.
- 12. On or about September 26, 2008 BCSB loaned the sum of \$1,340,500.00 to RC Ventures, LLC (hereinafter "Loan"). The Loan was made pursuant to the terms of a "Line of Credit Agreement" and Promissory Note entered into between BCSB and RC Ventures, LLC and a personal guarantee agreement executed by Cayton of the same date (hereinafter referred to as the "Original Loan Agreement"). True and correct copies of the Original Loan Agreement documents are attached hereto collectively as Exhibit 1 and incorporated herein by reference. Both RC Ventures, LLC and

 Cayton are identified as "Borrowers" in the Original Loan Agreement, and each of the Defendants was therefore jointly and severally liable for repayment of the entire amount of the Loan.

- 13. Among other things, the Original Loan Agreement required repayment in full of all amounts advanced to the Borrowers under its terms, plus all accrued interest, on or before September 26, 2009.
- 14. In making the Loan, BCSB relied upon the assets of Cayton and RC Ventures, LLC that Cayton disclosed to BCSB at the time of the Loan. In addition to the assets and income of RC Ventures, LCC, BCSB also relied upon the real property and other assets of Cayton that he disclosed to BCSB in his application process for the Loan, including, but not limited to, the residence Cayton owned at 234 Currey Lane, Sausalito, California (hereinafter, the "Currey Lane Property") and certain commercial property owned in the state of Florida (hereinafter, the "Florida Property," and collectively with the Currey Lane Property, the "Real Property"). Cayton had purchased the Currey Lane Property in 2006 as an unmarried man, which fact was disclosed to BCSB. Cayton also used the Currey Lane Property as the business address of his various business entities, which included the RC Entities.
- 15. RC Ventures, LLC and Cayton later defaulted on the Original Loan Agreement. As a result, lawsuits involving several of the parties (plus others) were filed, which eventually resulted in the parties' entering into a written Settlement and Release Agreement in or about November 2011.
- 16. As required by the terms of the Settlement and Release Agreement, on November 1, 2011 RC Ventures, LLC and Cayton individually entered into a "Commercial Debt Modification Agreement" with BCSB (the "Modification Agreement"). A true and correct copy of the Modification Agreement is attached hereto as Exhibit 2 and incorporated herein by reference.
- 17. Among other things, the Modification Agreement reduced the amount due and owing on the Loan at that time to the total principal sum of \$1,340,500.00. The Loan was also modified to provide for repayment in equal monthly installments of seven thousand four hundred thirty-five dollars and ninety-eight cents (\$7,435.98) commencing December 12, 2011 until fully paid (the "Installment Payments").

- 18. The interest rate provided for under the Modification Agreement was 3.0% per annum; however, in the event of a default, the interest rate was to increase to 16% per annum ("Default Rate"). The Modification Agreement also extended the maturity date of the Loan, as reflected in the Original Loan Agreement, to November 1, 2018.
- 19. Other than the aforementioned modifications, the Modification Agreement expressly stated that all of "the terms of the Prior Obligation [Original Loan Agreement] remain in effect." (Hereinafter, the Original Loan Agreement and the Modification Agreement will sometimes be collectively referred to as the "Agreement.")
- 20. Commencing December 12, 2011, and through August 2014, Defendants made all Installment Payments as required by the Agreement.
- 21. Plaintiff is informed and believes and on that basis alleges that Cayton died on August 13, 2014. The cause of death listed on the death certificate of Revels M. Cayton issued by the Marin County Public Health Department was "Cardiopulmonary Arrest; Prostate Cancer."
- 22. Plaintiff was unaware of Cayton's death until Installment Payments on the Agreement ceased to be made in January 2015. At that point Plaintiff investigated and learned that Cayton had died several months earlier, even though between August 2014 and January 2015 Installment Payments continued to be made by the RC Entities, checks for which were apparently being signed by DeMarsh.
- 23. Plaintiff has also recently learned that in or about May 2014, without apparent consideration, Cayton transferred title to the Currey Lane Property to himself and DeMarsh as "joint tenants." At the time of such transfer both Cayton and DeMarsh knew that he was suffering from a fatal illness and would likely die in a short time. When Cayton in fact died just three months later, DeMarsh executed and recorded with the County of Marin an "Affidavit-Death of Joint Tenant," transferring title to the Currey Lane Property to herself as the surviving joint tenant with right of survivorship. Plaintiff is informed and believes and on that basis alleges that the Currey Lane Property is worth at least \$3,000,000 and has loans against it which total approximately \$2,000,000.
- 24. Plaintiff has also recently learned that in or about October 2014, after Cayton's death, DeMarsh sold the Florida Property for \$3,000,000. Plaintiff is informed and believes and on that

basis alleges that at the time of the sale by DeMarsh, the Florida Property was encumbered by a real estate mortgage of approximately \$2,100,000.

- 25. Plaintiff is informed and believes and on that basis alleges that DeMarsh has taken possession and control of all of the RC Entities' and Cayton's remaining assets, including cash and real property, which would have been available to pay the debt owed to BCSB. Further, DeMarsh had been actively involved in managing the affairs of the RC Entities when Cayton was alive and was well aware of the obligation owed by the RC Entities and Cayton himself under the Loan and the Agreement.
- 26. At the time of filing this complaint, the outstanding balance owed under the Agreement was \$1,103,552.67, with interest continuing to accrue at the Default Rate since March 13, 2015.

### FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT AGAINST ALL DEFENDANTS

- 27. The allegations of Paragraphs 1 through 26 are re-alleged and incorporated herein by this reference, and Plaintiff further alleges as follows:
- 28. A written contract exists between BCSB and Defendants (the Agreement), as reflected in Exhibits 1 and 2 attached hereto and incorporated herein.
- 29. Plaintiff has performed all of the terms and conditions required of it under the Agreement.
- 30. Defendants have breached the written contract by failing to pay back the sums owed when due. Specifically, Defendants have been in default of the obligation to make the Installment Payments since January 2015.
- 31. The Agreement contains an acceleration clause entitling Plaintiff to demand and sue for the full amount due, plus all accrued interest, if the Loan goes into default. Although not required under the Agreement, Plaintiff made a written demand to Defendants on April 10, 2015 for full payment of the entire amount due on the Loan, but despite demand therefor, payment has not been made and Plaintiff now elects to accelerate the full balance.

 32. The Agreement contains an attorneys' fees clause, under which Plaintiff is entitled to recover all fees and costs (including attorneys' fees) incurred in having to enforce the Agreement and to collect on the Loan.

33. As a direct and proximate result of Defendants' breach of the Agreement, BCSB has been damaged in the amount of the balance due and owing of \$1,103,552.67, plus interest at the Default Rate from and after March 13, 2015, until paid. Plaintiff has also had to retain the services of the undersigned law firm in order to collect on the Loan and enforce the Agreement, and as a result, Plaintiff has incurred additional recoverable costs and attorneys' fees in an amount to be proved.

WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

### SECOND CAUSE OF ACTION [FOR FRAUDULENT TRANSFER AGAINST ALL DEFENDANTS]

- 34. The allegations of Paragraphs 1 through 26 are re-alleged and incorporated herein by this reference, and Plaintiff further alleges as follows:
- 35. Plaintiff is informed and believes and on that basis alleges that the RC Entities and Cayton have transferred assets, including the Real Property, to DeMarsh for no or less than adequate consideration.
- 36. Plaintiff is informed and believes and on that basis alleges that Defendants acted with the intent and purpose to transfer the assets and the Real Property from Cayton to themselves in order to hinder, delay, or defraud BSCB, which is a creditor.
- 37. Plaintiff is informed and believes and on that basis alleges that such fraudulent transfers include, but are not limited to, the monies and assets of the RC Entities, which were transferred to one another and/or to DeMarsh, as well as the Currey Lane Property transferred from Cayton to DeMarsh less than three (3) months before his imminent death without adequate consideration, and the Florida Property sold by DeMarsh after Cayton's death.
- 38. As a direct and proximate result of Defendants' wrongful and intentional conduct, Plaintiff has been harmed and damaged in the amount of the balance due and owing of \$1,103,552.67, plus interest at the Default Rate from and after March 13, 2015, until paid. Plaintiff

has also had to retain the services of the undersigned law firm in order to collect on the Loan and enforce the Agreement, and as a result, Plaintiff has incurred additional recoverable costs and attorneys' fees in an amount to be proved.

39. Defendants committed the acts herein alleged maliciously, fraudulently and with the wrongful and deliberate intention of injuring Plaintiff and benefiting themselves, and acted with an improper motive amounting to malice and conscious disregard of Plaintiff's rights. Accordingly, Plaintiff is entitled to recover punitive and exemplary damages from Defendants.

WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

#### THIRD CAUSE OF ACTION FOR CONSTRUCTIVE TRUST AGAINST DEMARSH AND DOES 1-20]

- 40. The allegations of Paragraphs 1 through 26 are re-alleged and incorporated herein by this reference, and Plaintiff further alleges as follows:
- 41. Plaintiff is informed and believes and on that basis alleges that DeMarsh has wrongfully, by way of undue influence, fraudulent transfer, or other wrongful act, taken possession of Cayton's and the RC Entities' money and assets, including the Real Property and any proceeds therefrom, that would be available to BCSB as a creditor of Cayton and the RC Entities to collect the amount due and owing to BCSB.
- 42. By virtue of DeMarsh's wrongful acts, as aforesaid, she holds the converted funds and/or Real Property, to the extent of the amount owed to Plaintiff on the Loan, in trust for Plaintiff.
- 43. As a direct and proximate cause of Defendants' wrongful conduct, BCSB has been damaged in the amount of the balance due and owing of \$1,103,552.67, plus interest at the Default Rate from and after March 13, 2015, until paid. Plaintiff has also had to retain the services of the undersigned law firm in order to collect on the Loan and enforce the Agreement, and as a result, Plaintiff has incurred additional recoverable costs and attorneys' fees in an amount to be proved.

WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

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1	PRAYER FOR RELIEF		
2	For All Causes of Action		
3	1. For general damages in the sum of \$1,103,552.67;		
4	2. For interest in the amount of 16% per annum since March 13, 2015;		
5	3. For all costs incurred;		
6	4. For reasonable attorneys' fees;		
7	5. For all other relief the Court deems just and proper.		
8	For the Second Cause of Action		
9	1. For punitive damages as warranted.		
10	For the Third Cause of Action		
11	1. For an order declaring that Defendant DeMarsh hold the Real Property and		
12	any other assets of Cayton over which she now exercises control in trust for Plaintiff.		
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14	DATED: MAY 4, 2015 BERLINER COHEN		
15			
16	BY: RALPHŚWANSON		
17	DAWN C. SWEATT ATTORNEYS FOR PLAINTIFF BATTLE CREEK		
18	STATE BANK		
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4843-0621-9555v1	-9-		
DSWEATT\18508002	COMPLAINT		

## **EXHIBIT 1**

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Septembro, CA 84985 PO BO	X 308	Date 09-29-2008
BATTI	E CREEK, HE 88715-0308	Maturity Date 88-26-2009
		Loan Amount \$ 1.400.000.00
BORROWER'S NAME AND ADDRESS	LENDER'S NAME AND ADDRESS	Renowal Of
"You	means the lender, its successors and assigns.	CODES GL530/T511/C204
For value received, I promise to pay to you, or your order,	at your address listed above the PRINCIPAL surr	
Single Advance; I will receive all of this principal sum of	n 10-14-08 No edictional	maken and an analog of the decider of the second
Multiple Advance: The principal sum shown above is the limit of same amount of same state.	to maximum amount of principal I can beyon m	oder this note. On <u>Q-26-08</u>
Conditions: The conditions for future advances are	Subject to Bank Approval.	er anymeas era consumbasen.
Open End Credit: You and I agree that I may be	frow up to the maximum amount of principal m	oro then one time. This feature is subject to
(A Closed End Credit: You and I agree that I may be	rrow up to the maximum only one time (and sul	
INTEREST: I agroe to pay interest on the outstanding princ per year until 12:28:2008	ipat belance from	at the rate of 7.000 %
Variable Rate: This rate may then change as stated bel	ow. *	
Index Rate: The future rate will be 1.000 percent at at least 75% of the 30 largest U.S. banks.	the following index rate: <u>U.S. p</u>	ime rate is the base rate on corporate learn posted by
No Index: The future rate will not be subject to a		
Of Frequency and Tinding: The rate on this note ma	my internal or external index. It will be entirely by	your control.
A change in the interest rate will take affect 0	A cusuode es outers se santa est assaurité 15-78-5808	
(A Limitational During the term of this loan, the app	dicable some of the will not be more the	n <u>H/A%</u> or less than
	not chance more than	M anak
Effect of Variable Rate: A change in the interest rate	will have the following effect on the payments:	
The amount of each scheduled payment will char	Of The amount of the final pa	ryment will change.
ACCRUAL METHOD: Interest will be calculated on a	A-mai/1965	
POST MATURITY RATE: I agree to pay interest on the unput	attiss(185 bas	ida. Asamani malakin dada asaman da s
on the same fixed or variable rate basis in effect	before maturity (as indicated shows)	utitic paid in full, as stated below:
28 at a fato equal to 18.00	•	•
Di LATE CHARGE: If a payment is made more than	days efter it is due, I agree to pay a k	to charge of 5,000% of the payment amount
ADDITIONAL CHARGES: In addition to Interest, I agree	to pay the following charges which 🔲 are [	D are not included in the principal amount
PAYMENTS: I agree to pay this note as follows:		
On demand, but if on demand to made then secretarily assumed at a secretarily	todayana a ta	
On demand, but if no demand is made then quarterly payments of accrued i This is a variable rate iosa and the payment amounts may change. The fine	necessary means ages up over	anting on 12-28-2008 and principal due on 09-28-2006
the state of the s	s hard many and colorida	
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ADDITIONAL TERMS:		
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O SECURITY: This pate is sentently as and build		
SECURITY: This note is separately secured by (de document by type and date):		this loan is <u>line of Credit: 2008 Epic LT, S/H 040</u>
A Separate Aircraft Security Agreement	NSCIRC	
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man and a second	SIGNATURES: I AGREE TO	THE TERMS OF THIS NOTE INCLUDING
Units section is for your internal use. Failure to list a separate security document	SIGNATURES: I AGREE TO THOSE ON PAGE 2). I hovo	
(This section is for your internal use, Failure to list a separate security docume egreement will not secure this note.)	SIGNATURES: I AGREE TO	THE TERMS OF THIS NOTE INCLUDING
	SIGNATURES: I AGREE TO THOSE ON PAGE 2). I hovo	THE TERMS OF THIS NOTE INCLUDING
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	SIGNATURES: I AGREE TO THOSE ON PAGE 2). I have RC Ventures, LLC	THE TERMS OF THIS NOTE (INCLUDING
Signature for Landor	SIGNATURES: I AGREE TO THOSE ON PAGE 2). I have RC Ventures, LLC  Revels Ceyton, Member	THE TERMS OF THIS NOTE INCLUDING
	SIGNATURES: I AGREE TO THOSE ON PAGE 2). I have RC Ventures, LLC	THE TERMS OF THIS NOTE INCLUDING
Signature for Lendor	SIGNATURES: I AGREE TO THOSE ON PAGE 2). I have RC Ventures, LLC  Revels Ceyton, Member	THE TERMS OF THIS NOTE INCLUDING
Signature for Lendor	SIGNATURES: I AGREE TO THOSE ON PAGE 2). I have RC Ventures, LLC  Revels Ceyton, Member	THE TERMS OF THIS NOTE INCLUDING
Signature for Lendor ROGER L. BRESTEL, President	SIGNATURES: I AGREE TO THOSE ON PAGE 2). I have RC Ventures, LLC  Revels Ceyton, Member	THE TERMS OF THIS NOTE INCLUDING
Signature for Lendor ROGER L BRESTEL, Prezident UNIVERSAL NOTE	SIGNATURES: I AGREE TO THOSE ON PAGE 2). I have RC Ventures, LLC  Revels Ceyton, Member  Revels Ceyton, As An Individual	THE TERMS OF THIS NOTE INCLUDING
Signature for Lendor	SIGNATURES: I AGREE TO THOSE ON PAGE 2). I have RC Ventures, LLC  Revels Ceyton, Member  Revels Ceyton, As An Individual	THE TERMS OF THIS NOTE INCLUDING

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DEFINITIONS: As used on page 1, "Ø" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns. APPLICABLE LAW: The law of the state in which you are located will make this page which is contrary to applicable

govern this note. Any term of this note which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation, if any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement

COMMISSIONS OR OTHER REMUNERATION: I understand and agree that any insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or

other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve money retained by you or

parties as part of this note may also involve money retained by you or paid back to you as commissions or other remuneration. PAYMENTS: Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any, partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in till funless, when I make the prepayment, you and I agree in writing to the (unless, when I make the prepayment, you and I agree in writing to the

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here (either before or after maturity), if any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE: The index will serve only as a device for setting the rate on

this note. You do not guerantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

ACCRUAL METHOD: The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE: For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier. SINGLE ADVANCE LOANS: If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS: If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit. POST MATURITY RATE: For purposes of deciding when the "Post

additional credit. PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

SET-OFF: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.
"Right to receive money from you" means;

(1) any deposit account balance I have with you;

(2) any money owed to me on an item presented to you or in your possession for collection or exchange; and

(3) any repurchase agreement or exchange, and
"Any amount due and payable under this note" means the total
amount of which you are entitled to demand payment under the terms of
this note at the time you set off. This total includes any balance the due
date for which you properly accelerate under this note.

If my dish to receive manney from you is also owned by someone who

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative, it also does not apply to any individual Ratirement Account or other tax-deferred retirement account. You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your

exercise of your right of set-off.
REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

DEFAULT: I will be in default if any one or more of the following occur: (1) I fall to make a payment on time or in the amount due; (2) I fail to keep the property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my Babilities exceed my assets or I am unable to pay my debts as they become duel; (6) I make any written statement or pay iny deaths as they decome duer; to) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by this note is used in a manner or for a purpose which infeatens confiscation by a legal authority; [9] I change my name or assume an additional name without first notifying you before making such a change; [10] I fail to plant, cultivate and harvest crops in due season if I am a producer of crops; [11] any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940; Subpart of Evhible M. G. Exhibit M.

REMEDIES: If I am in default on this note you have, but are not limited to, the following remedies:

(1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).
(2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "Set-Off" aragraph herein.

You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any

other remedy.

(4) You may refuse to make advances to me or allow purchases on credit by me.

cradit by me.

(5) You may use any remedy you have under state or federal law.

By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES: I agree to pay all costs of collection, replayin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. jurisdiction under the Bankruptcy Code.

WAIVER: I give up my rights to require you to do certain things. I will not

require you to:

(1) demand payment of amounts due (presentment);
(2) obtain official cartification of nonpayment (protest); or
(3) give notice that amounts due have not been paid (notice of dishenor). I waive any defenses I have based on suretyship or impairment of

collateral. OBLIGATIONS INDEPENDENT: I understand that I must pay this note OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may do so without any notice that it has not been paid (notice of dishonor). You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without

of the note: I will not assign my congestion allow this egreement visition, your prior written approval.

FINANCIAL INFORMATION: I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will

that the financial statements and information I provide to you are or will be accurate, correct and complete.

NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

34 Carrey Lane	BATTIE CREEK STATE BANK	1
	202 W MAIN	Loan Number 33875
ausakto, EA 94865	PO BOX 308	Oors 63 28 2006
	BATTLE CREEK, NE. 88715-0308	Maturity Date 09-28-2009 Losa Amount # 1.408.000.00
	•	Renewal Of
BORROWER'S NAME AND ADDRESS includes each bostower above, posity and severally	You meens the leader, its successors and early	COORS GL530/1511/C704
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per year until 12:25-2008	J .	
Variable flate: This tate may then change as	stated helow.	I P
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'X at a cate equal to 16.00		
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RC Ventures, LLC		
	BATTLE CREEK STATE BANK	
234 Curray Lane	202 W MAIN	
Saussilte, CA 94965	PD 80X 308	Line of Credit No. 33975
	BATTLE CREEK, NE 88715-0308	Date 09-28-2008
BORROWER'S NAME AND ADDRESS	LENDER'S NAME AND ADDRESS	Max. Credit Amt. 1,400,000.00
"I" moludes each borrower above, jointly and severally.	"You" means the lendor, its successors and assigns,	Loan Ref. No. 33975
ou have extended to me a line of credit in the MOUNT of one million four hundred thousand and not full		\$ 1,400,000,00
thiount of one million four hundred thousand and no 100 out will make loons to me from time to time until expires on that date, I will remain obligated to parform terms of this agreement, as evidenced by any note or this line of credit is an agreement between you an irrect payment, relience for future payment or in any of	d ma It is not intended that new shire were a selection	18.
. AMOUNT: This line of credit is:	•	
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tero and mal 100	a loan to me under this line of credit once the ago	
subject to the obligatory or discretionary limitations ab		
	may borrow up to the maximum amount of principal	more than one time.
IZI CLOSED-END: I may borrow up to the maxim		
. PROMISSORY NOTE: I will repay any advences i	nade according to this line of credit agreement as is! I sign at a later time which represent advances	set out in the promissory note, I signed o
RELATED DOCUMENTS: I have signed the following this line of credit:	ng documents in connection with this line of credit	
		and notels) entered into in accordance with
31 security agreement dated 09-26-2008		
30 security agreement dated 09-26-2008	П	
☐ mortgage dated		
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DEFINITIONS: As used on page 1, "X" meens the terms that apply to the host. "L" "ma" or "my" meens each Bortower who signs this note and each other person or togal entity producing guaranters, endurers, and stratest who agrees to pay this note (togather referred to as "us"). "You" or "yous" insens the Lender and its successors and essigns. APPLICABLE LAW: The law of the state in which you are located will power the note. Any torn of this unter which is contrary to applicable law will not be effective, unless the few permas you and no to agree to such a Variation. If any provision at this agreement cannot be substant according to its terms, this fact will not allest the subcreaking of the fermender of this agreement. We medicalize of this agreement, we made without your express written consent. If me is of the desired to this agreement,

thace without your oppress that the december, or of the december, or of the REMUNICRATION: I impleistant and eighe that any that where premunts paid to insurance beingenies as part of the note will written money latered by you or paid back to you as commissions or offset temperatures on.

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will deview noticely resistant by you are past seem to good an commission.

In addition, I undestand and agree that some inter payments to third paties as part of this note may area envolve strainey resemble by our or test to accommissions or inter termineration.

PAYMENTS: Each payment I make on this near will their reduce the amount I ower you for charges which see nother appress nor principal. The remainder of each payment will then reduce accritical compaid increasing and their uniqued principal. If you and I agree to a diletont application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire betternown of this loss without penalty, trained was specify to the contact on the time. Any parts of payment will not excuse or reduce any later schaduled payment until this note is guident full sudsess, when I make the prepayment, you and I agree in writing to the trainery.

excuse or forthice any tarce schemular payment with the term to perform the prepayment, you and I egise in writing to the unitary!.

WITEREST: Interest occurs on the principal remement unpend from time in time, and paid in tail, if I secure the principal in more than now advance, each advance will start to seen testests only when I leasew the advance. The triparest rate in effect on this note at any grean time will easily be a time of the contrary. I do not agree to pay and you do not must do chairs any time to the contrary. I do not agree to pay and you do not must do chairs any rate of storess that is higher than the maunitum tase of interest you mould charge under sphicalls leve for the extension of credit that is agreed in here teither before a after measurably agree in correct d, and if you actually scolect more interest accrual is sent and is in orior, we instably agree in correct d, and if you actually colect more interests than effected by lew and this agreement, you agree to refund it to me.

INDEX RATE: The index will serve only as a divice for acturing the time on this note. You do not quarantee by selecting this linder, or the mingin, that the tase on this note will be the same rate you charge on any other loans or class of loans to make to me to other borrowers.

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institud is stated, then you may use any issuencible accitual method for calculating interest.

POST MATURITY RATE: for purposes of deciding when the "Post Maturity Russ" ishown an page it applies, the term "maturity" manus the date of the term theodod payment indicated on page I of this note or the date you accelerate payment on the note, whichever is easilier. SINGLE ADVANCE LOAKES IT this is a single advance been, you and I supect visit you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described on the "PATMENTS BY LENGER" paragraph below.

MULTIPLE ADVANCE LOAKS: If this as a multiple advance loan, you and I supect that you will make more than one advance of principal. If this is closed and credit, repaying a part of the principal well not enable me to additional credit.

closed and credit, repeying a part of file pencipal well not onside me to additional credit.

AVRIENTS BY LENGER: If you are authorized so pay, on my behalt, charges I am obligated to pay fauch as property insurance premiums), then you may treat those payments by you as advances and addition to the unpaid pencipal under the noise, or you may demand them to the unpaid pencipal under the noise, or you may demand them to the unpaid pencipal under the noise, or you may demand them to the unpaid pencipal under the noise, or you may demand the noise agents any right I have to receive money from you.

"Right to receive money from you means:

11] any deposit account behance I have with you;

12] any means evend to me on an intemp passented to you of in your pussessed for collection of exchange; and

(3) any repurchase agreement or other nearly means the total amount of safety you are entitled to demand payment under the terms of this noise of me time you set all. This total includes any believe the due date for which you property accessivate under the noise.

If my sight to receive money from you is also demand by someone who has not agreed to pay this noise, your upth of sal-off well apply to my insert in the obligation and to any other amounts I could writhdraw on my soft equest of endorsement. Your might of sal-off well-apply to any sole equest of endorsement. Your might of sal-off well-apply to a supresentables. It said close not apply to any Individual Restrement Account or other lax defended restrement eccount.

You will not be liable for the clahonor of any check when the definence occurs because you see of all this dabt against any of my accounts. I agree to hold you harmless hum any such claims arising as a result of you secrets of your ight of socioli.

REAL ESTATE OR RESIDERCE SECURITY: If this curp is secured by real estate or a condence that is personal property, the anations of a default and you fermedous for such a default will be determined by applicable law, by the taims of any separate instrument treating the security interest and, to the stent not principle by law and not contrary in the terms of the apparate security instrument, by the "Default" and terms of the apparate security instrument, by the "Default and the apparate security instrument, by the "Default and the apparate of the instrument, by the "Default and the apparate of the instrument, by the "Default and the apparate of the instrument, by the "Default and the apparate of the interest of the inflowing occur; I'll all not required if required (3) I led to pay, it loops my promise, on any solid or agreement in the with yout (4) any other credition of time attempts to collect any dobt I own time frough oout proceedings; [5] I do, on declared micrompotent, make an assignment for this bonelit of creditions, or become pay my debits as they become should like any written statement or provides my innancial information that untrue in anocurare as the time it was provided [7] tolo I led to do something which causes you to believe that you with new difficulty collecting the amount invery my. [8] any collectered solutions, this note is used in a mancier of for a purpose which treadeness on itsertion by the situation of lighty another land or the conversion of wottings of caps; I'l query loan proceeds as used for a purpose that will consider to produce an agree them of however the constitution of legity mobile land or to the conversion of wottings to produce an agree the trade to the conversion of wottings to produce an agree the trade to the conversion of

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT			
State of California  County of MAPIN  On Seriember 22' 2008  before me, Marin  personally appeared Revers (  LEVELS CATION	Hore Insert Name and Title of the Officer  A 1700 A Manuscrip ?  Name(a) of Signer(a)		
ANN WAIRIMU MUNENE Commission # 1854626 Notary Public - California Martin County My Comm. Expires Feb 22, 2009	who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are-subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/ner/their authorized capacity(jes), and that by his/ner/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.  I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  WITNESS my hand and official seal.		
	Signature Signature of Notary Public		
and come bready transment teamoners and te	may prove valuable to persons relying on the document attachment of this form to another document.		
Description of Attached Document  Title or Type of Document:	DE CALL		
Document Date: Selfem BER 26	2008		
Signer(s) Other Than Named Above:	Number of Pages:		
Capacity(ies) Claimed by Signer(s)			
Signer's Name;	Signer's Name:		

## **EXHIBIT 2**

BORROWER NAME AND ADDRESS	LENDER NAME AND ADDRES	E LOAN DESCRIPTION
RG Vesteres, LLC and Rembs Cayton 224 Carry Laws	Battle Creek state Bank 202 yr Main	Nyamber 23975
Sousidio, CA \$4943	PO BOX 194 BAYTLE CREEK, NE 11715-4006	Amount \$ 1,340,500.00
		Date 05-11-2009
COM	MERCIAL DEBT MODIFICATIO	n agreement
DATE AND PARTIES. The dire of this Debt M DEFINITIONS, As used in this Modification, the Pronouns. The processes 'L' "time," and "my" refi- processors, and saight. You said "your "title" it intered on the Modification or Prior Obligation. Prior Obligation "frior Deligation" rifers to incine or document that evidences my indebtedness. ETTLEMENT AGRESMENT. The serm "E chiect to the Settlement Agreement. ACCIGGOUND, You sed I have entered into a P D psychia on deceard. (D psychia on document but  9-14:000 As of the date of this Modification, the sensors I 1 1.66:14:22-22-24-2  MODIFICATION, is consideration of the Section ED DEST MODIFICATION. The Debt is changed to \$1,40,500.00, rece ETMITEREST RATE MODIFICATION.  ED INTEREST RATE MODIFICATION.	edification Agreement (Modification) is Nevember to come have the following mesoning: at the cash Romover algaing this Modification, individual to the Leader, with its participants or syndectors, my services agreement governing my premise to make any extensions, remember, modifications, and a satisfactor Agreement "means the agreement between the This principal amount of 150 with a stackman pit on demand is made, by the materity of the demand is made, by the materity of means Agreement, you and I agree to excelling the Principal amount of the Principal amount of the Principal and the Principal amount of the Principal and the Principal and the Principal amount of the Principal amount of the Principal amount of the Principal amount of the Principal and the States and the Principal amount of the Principal and the States and the Principal amount of the Principal and the States and t	i, 2011,  (dually and together with their haim, executors, administrators, autoreasons and assigns, or any person or early that acquires an pay you money, including any treat agreement, security agreement, abstitutions.  In you wall I duted Effective October 19, 2011. This Modification is Reit 17 artial #152 - NAME (Model)  possible principal amount of \$1,340,500,00  / (II) with a country date of facing place of facings place as follows.  ption.  the suppossible as follows.
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Exhibit 1 Page 1 of 2

## **EXHIBIT B**

1 RALPH J. SWANSON, CA STATE BAR NO. 67751 DAWN C. SWEATT, CA STATE BAR No. 238005 2 BERLINER COHEN TEN ALMADEN BOULEVARD 3 AUG - 5 2015 ELEVENTH FLOOR SAN JOSE, CALIFORNIA 95113-2233 JAMES M. KIM, Court Executive Officer TELEPHONE: (408) 286-5800 4 MARIN COUNTY SUPERIOR COURT FACSIMILE: (408) 998-5388 By: E. Chais, Deputy 5 ralph.swanson@berliner.com dawn.sweatt@berliner.com 6 ATTORNEYS FOR PLAINTIFF BATTLE CREEK STATE 7 BANK 8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN 9 BATTLE CREEK STATE BANK, CASE NO. CIV 1501631 10 11 Plaintiff, FIRST AMENDED COMPLAINT FOR BREACH OF CONTRACT 12 2. FRAUDULENT TRANSFER RC VENTURES, LLC, a Delaware limited 3. CONSTRUCTIVE TRUST 13 4. FRAUDULENT CONVEYANCE liability corporation, aka RC VENTURES 14 GROUP, LLC, a Delaware limited liability corporation, and RC VENTURES GROUP II, 15 LLC, a California limited liability corporation; MARI #1, LLC, a Delaware limited liability 16 corporation, MARI SUSANNA DEMARSH, an individual; MARI SUSANNA DEMARSH as the Special Administrator and Executor of 17 the ESTATE OF MICHAEL REVELS 18 CAYTON, and DOES 1 THROUGH 20, inclusive. 19 Defendants. 20 21 Comes now Plaintiff BATTLE CREEK STATE BANK, and for its First Amended 22 23 Complaint alleges: 24 THE PARTIES 25 Plaintiff Battle Creek State Bank (hereinafter "Plaintiff" or "BCSB") is, and at all 1. times relevant hereto was, a Nebraska banking corporation with its principal place of business in 26 27 Battle Creek, Nebraska. 28 FIRST AMENDED COMPLAINT SWEATT\18508002

- 2. Plaintiff is informed and believes and on that basis alleges that defendant RC Ventures, LLC is an unknown entity form with its principal place of business in the County of Marin, California and which at all times relevant hereto conducted business in the State of California, County of Marin.
- 3. Plaintiff is informed and believes and on that basis alleges that defendant RC Ventures Group, LLC, is a Delaware limited liability company with its principal place of business in the County of Marin, California, and which at all relevant times conducted business in the State of California, County of Marin.
- 4. Plaintiff is informed and believes and on that basis alleges that RC Ventures Group II, LLC, is a California limited liability company with its principal place of business in the County of Marin, California, and which at all relevant times conducted business in the State of California, County of Marin. Plaintiff is further informed and believes and on that basis alleges that RC Ventures Group II, LLC, is currently listed under the California Secretary of State's Business Portal web site as a suspended corporation.
- 5. Plaintiff is informed and believes and on that basis alleges that defendant RC Ventures, LLC, has also been known as and/or has done business as RC Ventures Group, LLC, or as RC Ventures Group II, LLC. (Hereinafter, RC Ventures, LLC; RC Ventures Group, LLC; and RC Ventures Group II, LLC, are sometimes collectively referred to for convenience as the "RC Entities.")
- 6. Plaintiff is informed and believes and on that basis alleges that MARI #1, LLC, is a Delaware limited liability company with its principal place of business in the County of Marin, California, and which at all relevant times conducted business in the State of California, County of Marin. (Hereinafter "MARI #1.")
- 7. Plaintiff is informed and believes and on that basis alleges that defendant Mari Susanna De Marsh (hereinafter "DeMarsh") is, and at all times relevant hereto was, an individual residing in the County of Marin, California.

- 8. Plaintiff is informed and believes and on that basis alleges that Michael Revels Cayton, aka Revels Cayton (hereinafter "Cayton"), was an individual, now deceased, who at all times relevant hereto resided in the County of Marin, California until his death on August 13, 2014.
- 9. An estate for Cayton has been opened twice in this county, the first by Petition to Administer Estate of Cayton (Marin County Superior Court Case No. 1501377) filed by Plaintiff on April 15, 2015. The second petition was filed by DeMarsh on or about May 15, 2015, to Administer Estate of Cayton and Probate Will filed in Marin County Superior Court Case No 1501831. In DeMarsh's petition she contends she is the Executor of Cayton's estate and she attached thereto a will allegedly executed by Cayton on August 2, 2014, just days before his death.
- 10. On June 29, 2015, DeMarsh was appointed Special Administrator for the Estate of Cayton in Case No. 1501377. Plaintiff then served DeMarsh in her capacity as the Special Administrator of the Estate of Cayton with its creditor's claim. The claim went unanswered and was deemed rejected by operation of law on or about August 3, 2015.
- 11. The true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants named and sued herein as DOES 1 through 20, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will amend its Complaint to show their true names and capacities when the same have been ascertained. Plaintiff is informed and believes and on that basis alleges that each of the fictitiously named Defendants is in some way responsible for the events, transactions, omissions, and occurrences referred to herein and that Plaintiff's damages as herein alleged were proximately caused by those events, transactions, omissions and occurrences. Throughout this Complaint references to "Defendants" shall mean and refer to "Defendants and each of them," unless the context specifies otherwise.
- 12. Plaintiff is informed and believes and on that basis alleges that at all times relevant hereto, Defendants, and each of them, were the agents, servants, partners or co-conspirators of each other and, in doing the things herein alleged, were acting within the course and scope of such agency, service, partnership or conspiracy.
- 13. Plaintiff is informed and believes and on that basis alleges that the RC Entities and MARI#1 are member-managed limited liability companies that had only two members, Cayton and

DeMarsh. Plaintiff is informed and believes and on that basis alleges that DeMarsh is now the only surviving member of the MARI #1 and the RC Entities.

- 14. Plaintiff is informed and believes and on that basis alleges that DeMarsh, and the MARI #1 and RC Entities are the alter egos of each other. Specifically, they commingled individual and corporate funds, failed to observe corporate formalities including maintaining minutes, and failed to contribute sufficient capital to sustain the MARI and RC Entities. There lacks such a unity of interest and ownership between MARI, each of the RC Entities and DeMarsh that the separate personalities of the limited liability companies and the owners do not exist. DeMarsh, MARI #1 and the RC Entities are jointly and severally liable for one another's debts because the failure to disregard the corporate entity would sanction a fraud or promote injustice.
- 15. In 2007 Cayton, through MARI #1, purchased a commercial property in Palmetto Florida valued at or around three million dollars. (Hereinafter "Florida Property").
- Ventures, LLC (hereinafter "Loan"). The Loan was made pursuant to the terms of a "Line of Credit Agreement" and Promissory Note entered into between BCSB and RC Ventures, LLC and a personal guarantee agreement executed by Cayton of the same date (hereinafter referred to as the "Original Loan Agreement"). True and correct copies of the Original Loan Agreement documents are attached hereto collectively as Exhibit 1 and incorporated herein by reference. Both RC Ventures, LLC and Cayton are identified as "Borrowers" in the Original Loan Agreement, and each of the Defendants was therefore jointly and severally liable for repayment of the entire amount of the Loan.
- 17. Among other things, the Original Loan Agreement required repayment in full of all amounts advanced to the Borrowers under its terms, plus all accrued interest, on or before September 26, 2009.
- 18. In making the Loan, BCSB relied upon the assets of Cayton, MARI #1 and RC Ventures, LLC that Cayton disclosed to BCSB at the time of the Loan. In addition to the assets and income of RC Ventures, LLC, BCSB also relied upon the real property and other assets of Cayton that he disclosed to BCSB in his application process for the Loan, including, but not limited to, the residence Cayton owned at 234 Currey Lane, Sausalito, California, APN 064-232-13 (hereinafter the

 "Currey Lane Property") and the Florida Property. (Hereinaster the Florida Property and Currey Lane Property are sometimes collectively referred to as the "Real Property"). Cayton had purchased the Currey Lane Property in 2006 as an unmarried man, which fact was disclosed to BCSB. Cayton also used the Currey Lane Property as the business address of his various business entities, which included the MARI #1 and RC Entities.

- 19. RC Ventures, LLC and Cayton later defaulted on the Original Loan Agreement. As a result, lawsuits involving several of the parties (plus others) were filed, which eventually resulted in the parties' entering into a written Settlement and Release Agreement in or about November 2011.
- 20. As required by the terms of the Settlement and Release Agreement, on November 1, 2011 RC Ventures, LLC and Cayton individually entered into a "Commercial Debt Modification Agreement" with BCSB (the "Modification Agreement"). A true and correct copy of the Modification Agreement is attached hereto as Exhibit 2 and incorporated herein by reference.
- 21. Among other things, the Modification Agreement reduced the amount due and owing on the Loan at that time to the total principal sum of \$1,340,500.00. The Loan was also modified to provide for repayment in equal monthly installments of seven thousand four hundred thirty-five dollars and ninety-eight cents (\$7,435.98) commencing December 12, 2011 until fully paid (the "Installment Payments").
- 22. The interest rate provided for under the Modification Agreement was 3.0% per annum; however, in the event of a default, the interest rate was to increase to 16% per annum on the unpaid balance ("Default Rate"). The Modification Agreement also extended the maturity date of the Loan, as reflected in the Original Loan Agreement, to November 1, 2018.
- 23. Other than the aforementioned modifications, the Modification Agreement expressly stated that all of "the terms of the Prior Obligation [Original Loan Agreement] remain in effect." (Hereinafter, the Original Loan Agreement and the Modification Agreement will sometimes be collectively referred to as the "Agreement.")
- 24. Commencing December 12, 2011, and through August 2014, Defendants made all Installment Payments as required by the Agreement.

- 25. Plaintiff is informed and believes and on that basis alleges that Cayton died on August 13, 2014. The cause of death listed on the death certificate of Revels M. Cayton issued by the Marin County Public Health Department was "Cardiopulmonary Arrest; Prostate Cancer."
- 26. Plaintiff was unaware of Cayton's death until Installment Payments on the Agreement ceased to be made in January 2015. At that point Plaintiff investigated and learned that Cayton had died several months earlier, even though between August 2014 and January 2015 Installment Payments continued to be made by the RC Entities, checks for which were apparently being signed by DeMarsh.
- 27. Plaintiff has also recently learned that in or about May 2014, without apparent consideration, Cayton transferred title to the Currey Lane Property to himself and DeMarsh as "joint tenants." At the time of such transfer both Cayton and DeMarsh knew that he was suffering from a fatal illness and would likely die in a short time. When Cayton in fact died just three months later, DeMarsh executed and recorded with the County of Marin an "Affidavit-Death of Joint Tenant," transferring title to the Currey Lane Property to herself as the surviving joint tenant with right of survivorship. Plaintiff is informed and believes and on that basis alleges that the Currey Lane Property is worth at least \$3,000,000 and has loans against it which total approximately \$2,000,000. Had the Currey Lane Property not been transferred to DeMarsh, the entirety of it would have been available as an asset to pay the debts owed by Cayton after he died.
- 28. Plaintiff has also recently learned that in or about October 2014, after Cayton's death, DeMarsh sold the Florida Property for \$3,000,000. Plaintiff is informed and believes and on that basis alleges that at the time of the sale by DeMarsh, the Florida Property was encumbered by a real estate mortgage of approximately \$2,100,000.
- 29. Plaintiff is informed and believes and on that basis alleges that DeMarsh has taken possession and control of all of MARI #1's, RC Entities' and Cayton's remaining assets, including cash and real property, which would have been available to pay the debt owed to BCSB. Further, DeMarsh had been actively involved in managing the affairs of MARI #1 and the RC Entities when Cayton was alive and was well aware of the obligation owed by the RC Entities and Cayton himself under the Loan and the Agreement.

30. At the time of filing this complaint, the outstanding balance owed under the Agreement was \$1,103,552.67, with interest continuing to accrue at the Default Rate since March 13, 2015.

### FIRST CAUSE OF ACTION IFOR BREACH OF CONTRACT AGAINST ALL DEFENDANTS

- 31. The allegations of Paragraphs 1 through 30 are re-alleged and incorporated herein by this reference, and Plaintiff further alleges as follows:
- 32. A written contract exists between BCSB and Defendants (the Agreement), as reflected in Exhibits 1 and 2 attached hereto and incorporated herein.
- 33. Plaintiff has performed all of the terms and conditions required of it under the Agreement.
- 34. Defendants have breached the written contract by failing to pay back the sums owed when due. Specifically, Defendants have been in default of the obligation to make the Installment Payments since January 2015.
- 35. The Agreement contains an acceleration clause entitling Plaintiff to demand and sue for the full amount due, plus all accrued interest, if the Loan goes into default. Although not required under the Agreement, Plaintiff made a written demand to Defendants on April 10, 2015 for full payment of the entire amount due on the Loan, but despite demand therefor, payment has not been made and Plaintiff now elects to accelerate the full balance.
- 36. The Agreement contains an attorneys' fees clause, under which Plaintiff is entitled to recover all fees and costs (including attorneys' fees) incurred in having to enforce the Agreement and to collect on the Loan.
- 37. As a direct and proximate result of Defendants' breach of the Agreement, BCSB has been damaged in the amount of the balance due and owing of \$1,103,552.67, plus interest at the Default Rate from and after March 13, 2015, until paid. Plaintiff has also had to retain the services of the undersigned law firm in order to collect on the Loan and enforce the Agreement, and as a result, Plaintiff has incurred additional recoverable costs and attorneys' fees in an amount to be proved.

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WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

### SECOND CAUSE OF ACTION [FOR FRAUDULENT TRANSFER AGAINST ALL DEFENDANTS]

- 38. The allegations of Paragraphs 1 through 30 are re-alleged and incorporated herein by this reference, and Plaintiff further alleges as follows:
- 39. Plaintiff is informed and believes and on that basis alleges that MARI #1, the RC Entities and Cayton have transferred assets, including money and the Real Property, to DeMarsh for no or less than adequate consideration.
- 40. Plaintiff is informed and believes and on that basis alleges that Defendants acted with the intent and purpose to transfer the assets and the Real Property from Cayton to themselves in order to hinder, delay, or defraud BSCB, which is a creditor.
- 41. Plaintiff is informed and believes and on that basis alleges that such fraudulent transfers include, but are not limited to, the monies and assets of the RC Entities, which were transferred to one another and/or to DeMarsh, as well as the Currey Lane Property transferred from Cayton to DeMarsh less than three (3) months before his imminent death without adequate consideration, and the Florida Property sold by DeMarsh merely six weeks after Cayton's death.
- 42. As a direct and proximate result of Defendants' wrongful and intentional conduct, Plaintiff has been harmed and damaged in the amount of the balance due and owing of \$1,103,552.67, plus interest at the Default Rate from and after March 13, 2015, until paid. Plaintiff has also had to retain the services of the undersigned law firm in order to collect on the Loan and enforce the Agreement, and as a result, Plaintiff has incurred additional recoverable costs and attorneys' fees in an amount to be proved.
- 43. Defendants committed the acts herein alleged maliciously, fraudulently and with the wrongful and deliberate intention of injuring Plaintiff and benefiting themselves, and acted with an improper motive amounting to malice and conscious disregard of Plaintiff's rights. Accordingly, Plaintiff is entitled to recover punitive and exemplary damages from Defendants.

WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

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#### THIRD CAUSE OF ACTION FOR CONSTRUCTIVE TRUST AGAINST DEMARSH INDIVIDUALLY AND DOES 1-201

- The allegations of Paragraphs 1 through 30 are re-alleged and incorporated herein by 44. this reference, and Plaintiff further alleges as follows:
- Plaintiff is informed and believes and on that basis alleges that DeMarsh has 45. wrongfully, by way of undue influence, fraudulent transfer, or other wrongful act, taken possession of Cayton's, MARI #1's and the RC Entities' money and assets, including the Real Property and any proceeds therefrom, that would be available to BCSB as a creditor of Cayton and the RC Entities to collect the amount due and owing to BCSB. In addition to the money and assets of the RC Entities and MARI #1, BCSB also relied upon the Florida Property and Currey Lane Property in deciding whether to make the loan to Cayton, because Cayton represented to BCSB that he owned one hundred percent of the Real Property.
- By virtue of DeMarsh's wrongful acts, as aforesaid, she holds the converted funds 46. and/or Real Property, to the extent of the amount owed to Plaintiff on the Loan, in trust for Plaintiff.
- As a direct and proximate cause of Defendants' wrongful conduct, BCSB has been 47. damaged in the amount of the balance due and owing of \$1,103,552.67, plus interest at the Default Rate from and after March 13, 2015, until paid. Plaintiff has also had to retain the services of the undersigned law firm in order to collect on the Loan and enforce the Agreement, and as a result, Plaintiff has incurred additional recoverable costs and attorneys' fees in an amount to be proved.

WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

# ND EXECUTOR OF THE EST.

- The allegations of Paragraphs 1 through 30 are re-alleged and incorporated herein by 48. this reference, and Plaintiff further alleges as follows:
- In making the Loan, BCSB relied upon the assets of Cayton disclosed to BCSB at the 49. time of the Loan, including the Currey Lane Property.

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1	50. Cayton had purchased the Currey Lane Property in 2006 as an unmarried man, which				
2	fact was disclosed to BCSB.				
3	51. The transfer to DeMarsh of the Currey Lane Property, as aforesaid, was made without				
4	adequate consideration therefor and with the intent to hinder, delay or defraud creditors of Cayton.				
5	52. Plaintiff is informed and believes and on that basis alleges that the Currey Lane				
6	Property is worth at least \$3,000,000 and has loans against it which total approximately \$2,000,000.				
7	53. At the time of the conveyance of the Currey Lane Property without adequate				
8	consideration, Plaintiff was a "creditor" having a "claim" against Cayton and his "assets," including				
9	the Currey Lane Property, as such terms are defined in California Civil Code section 3439.01.				
10	54. As a direct and proximate cause of Defendants' wrongful conduct, BCSB has been				
11	damaged in the amount of the balance due and owing of \$1,103,552.67, plus interest at the Default				
12	Rate from and after March 13, 2015, until paid. Plaintiff has also had to retain the services of the				
13	undersigned law firm in order to collect on the Loan and enforce the Agreement, and as a result,				
14	Plaintiff has incurred additional recoverable costs and attorneys' fees in an amount to be proved.				
15	WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.				
16	PRAYER FOR RELIEF				
17	For All Causes of Action				
18	1. For general damages in the sum of \$1,103,552.67;				
19	2. For interest in the amount of 16% per annum since March 13, 2015;				
20	3. For all costs incurred;				
21	4. For reasonable attorneys' fees;				
22	5. For all other relief the Court deems just and proper.				
23	For the Second Cause of Action				
24	1. For punitive damages as warranted.				
25	For the Third Cause of Action				
26	1. For an order declaring that Defendant DeMarsh hold the Real Property and				
27	any other assets of Cayton over which she now exercises control in trust for				
28	Plaintiff.				
	-10-				
830-4973-3925v1 ISWEATT\18508002	FIRST AMENDED COMPLAINT				

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1	<i>"</i>
2	For the Fourth Cause of Action
3	1. For an order voiding the May 2014 conveyance of title of the Currey Lane
4	Property to Cayton and DeMarsh as "joint tenants"
5	d
6	DATED: AUGUST 4, 2015 BERLINER COHEN
7	Ву:
8	RALPH SWANSON DAWN C. SWEATT
9	ATTORNEYS FOR PLAINTIFF BATTLE CREEK STATE BANK
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830-4973-3925v1 SWEATT118508002	-11- FIRST AMENDED COMPLAINT

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1	Ralph J. Swanson, CA State Bar No. 67751 Dawn C. Sweatt, CA State Bar No. 238005	1
2	BERLINER COHEN	
3	TEN ALMADEN BOULEVARD ELEVENTH FLOOR	
4	SAN JOSE, CALIFORNIA 95113-2233 TELEPHONE: (408) 286-5800	*
5	FACSIMILE: (408) 998-5388 ralph.swanson@berliner.com	
6	dawn.sweatt@berliner.com	
7	ATTORNEYS FOR PLAINTIFF BATTLE CREEK STAT BANK	TE .
8	Y = -	FORNIA, COUNTY OF MARIN
9		
10	BATTLE CREEK STATE BANK,	CASE NO. CIV 1501631
11	Plaintiff,	CERTIFICATE OF SERVICE
12	v.	
13	RC VENTURES, LLC, a Delaware limited	*
14	liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability	
15	corporation, and RC VENTURES GROUP II,  LLC a California limited liability corporation;	
16	MARI #1, LLC, a Delaware limited liability corneration, MARI SUSANNA DEMARSH,	
17	an individual; MARI SUSANNA DEMARSH as the Special Administrator and Executor of	
18	the ESTATE OF MICHAEL REVELS CAYTON, and DOES 1 THROUGH 20,	
	inclusive,	
19	Defendants.	
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21	SEE ATTACHED.	
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815-3188-0998v1 :R\18506002	CERTIFICA	ATE OF SERVICE
	II .	

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1	Battle Creek State Bank v. RC Ventures, LLC, et al. Case No. CIV 1501631
2	PROOF OF SERVICE
3	I, Rebecca Flores, declare under penalty of perjury under the laws of the State of California
- 1	that the following facts are true and correct:
5	I am a citizen of the United States, over the age of eighteen years, and not a party to the within action. I am an employee of Berliner Cohen, LLP, and my business address is Ten Almaden Boulevard, Eleventh Floor, San Jose, California 95113-2233. On August 5, 2015, I served the
6	following document(s):  SUMMONS TO FIRST AMENDED COMPLAINT; AND
7	FIRST AMENDED COMPLAINT
8	in the following manner:
9	by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, from the sending facsimile machine telephone number of t
10	The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(c)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission
11	report was properly issued by the transmitting facsimile machine.
12	by placing the document(s) listed above in a scaled envelope with postage thereon fully prepaid, in the United States mail at San Jose, California addressed as set forth below.
13 14	by overnight mail by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.
15	by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
16	by e-mail or electronic transmission. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I cause the documents to be sent to the persons at the e-service by e-mail or electronic transmission, I cause the documents to be sent to the persons at the e-service by e-mail or electronic transmission, I cause the documents to be sent to the persons at the e-service by e-mail or electronic transmission, I cause the documents to be sent to the persons at the e-service by e-mail or electronic transmission.
17	mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
18	ATTORNEY FOR MARI SUSANNA DEMARSH
19	AND MARI SUSANNA DEMARSH AS THE SPECIAL ADMINISTRATOR AND EXECUTOR
<ul><li>20</li><li>21</li></ul>	OF THE ESTATE OF MICHAEL REVELS CAYTON:
22	Robyn B. Christo, Esq.
23	Epstein Law Firm 369-B Third Street,
24	San Rafael, CA 94901
25	I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service/Express Mail, Federal Express and other overnight mail services, to wit, that correspondence will be deposited with the United States Postal services, to wit, that correspondence will be deposited with the United States Postal
26	Service/overnight mail service this same day in the ordinary course of business.  Executed on August 5, 2015, at San Jose, California.
27	Executed on August 5, 2015, at oans 300,
28	REBECCA FLORES
	<b>∥</b>

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RALPH J. SWANSON, CA STATE BAR No. 67751 1 DAWN C. SWEATT, CA STATE BAR NO. 238005 BERLINER COHEN 2 TEN ALMADEN BOULEVARD ELEVENTH FLOOR AUG - 6 2015 3. SAN JOSE, CALIFORNIA 95113-2233 JAMES M. KIM. Court Executive Officer TELEPHONE: (408) 286-5800 4 MARIN COUNTY SUPERIOR COURT FACSIMILE: (408) 998-5388 By: R. Smith, Deputy raiph.swanson@berliner.com 5. dawn.sweatt@berliner.com 6 ATTORNEYS FOR PLAINTIFF BATTLE CREEK STATE 7 BANK SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN 8 9 CASE NO. CIV 1501631 BATTLE CREEK STATE BANK, 10 NOTICE OF ERRATA REGARDING Plaintiff, 11 EXHIBITS 1 AND 2 TO FIRST AMENDED COMPLAINT 12 RC VENTURES, LLC, a Delaware limited 13 liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability 14 corporation, and RC VENTURES GROUP II, LLC, a California limited liability corporation; 15 MARI #1, LLC, a Delaware limited liability corporation, MARI SUSANNA DEMARSH, 16 an individual; MARI SUSANNA DEMARSH as the Special Administrator and Executor of 17 the ESTATE OF MICHAEL REVELS CAYTON, and DOES 1 THROUGH 20, 18 inclusive. 19 Defendants. 20 21 TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD: 22 PLEASE TAKE NOTICE that Exhibits 1 and 2 to the First Amended Complaint was 23 inadvertently omitted at the time of filing. Attached hereto as Exhibit A is a correct copy of the First 24 Amended Complaint with exhibit attached. 25 BERLINER COHEN DATED: AUGUST 6, 2015 26 27 DAWN C. SWEATT ATTORNEYS FOR PLAINTIFF BATTLE CREEK STATE BANK 28 NOTICE OF ERRATA REGARDING EXHIBITS 1 AND 2 TO FIRST AMENDED GOMPLAINT 823-7198-8006v1 SWEATT\18508002

## EXHIBIT 1

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DEFINITIONS: As used on page 1, "8" means the terms that apply to this tean. "i," "me" or "my" means each Eurower who signs this note and each other person or legal entity (including guaranters, andsurers, and surelies) who agrees to pay this note (together referred to as "us"). "You" means the Lender and its successors and assigns. APPLICABLE LAW: The law of the state in which you are located will govern this note. Any term of this note which is contrary to applicable low will not be effective, unises the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced excerding to its terms, this fact will not affect the enforcediffy of the terms, the fact will not affect the enforced first with the agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

made without your express written consent. Time is of the easence in this agreement.

COMMISSIONS OR OTHER REMUNIERATION: I understand and egree that any insurance premiums paid to insurance companies as part of this note will involve mensy retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve mensy retained by you or paid back to you as commissions or other semaneration.

PAYMENTS: Each payment I make on this note will first reduce the amount I owe you for charges which are neither intense nor principal. The remainder of each payment will then reduce accuract unpulsi intenset, and then unpeid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay apert of, or the antin belance of this loan without penalty, unless we specify to the contrary on this note, Any partiel prepayment will not excuse or reduce any leter scheduled payment until this note is paid in full fulloss, when I make the prepayment, you and I agree in writing to the contrary!

contrays, when I make the prepayment, you and I agree in writing to the contrays, when I make the prepayment, you and I agree in writing to the contrays.

INTEREST: interest accruses on the principal remaining unpaid from time to time, until paid in full, if it receive the principal in more than one advance, each attente will start to com interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to have (either before or after maturity). If any notice of interest you could charge under applicable law for the extension of credit that is agreed to have (either before or after maturity). If any notice of interest accrual is sent and is in error, we murkelly agree to correct it, and if you actually collect more interest then allowed by low and this squament, you agree to refund it to me.

INDEX RATE: The index will serve only on a device for setting the rate on this note. You do not guarantee by selecting the index, or the margin, that the rate or this note will be the same rate you charge on any other loans or class of lears to one or other borrowers.

ACCRUAL METHOD: The amount of interest that I will pay on this lear page 1 of this note. For the purpose of interest establishen, the occursion method is stated, then you may use any reasonable accrual method for calculating interest.

method is stated, then you may use any reasonable secretar and calculating interest.

POST MATURITY RATE: For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier, sitiot. However, you and I support that you will make only one advance of principal. However, you may add other amounts to the principal if you muke any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS if this is a multiple advance been, you and I expect that you will make more than one advance of principal. If this is closed and credit, rapaying a part of the principal will not entitle me to additional credit.

1

expect that you will make more than one advance of principal. If this is closed and credit, repaying a part of the principal will not entitle me to additional credit.

PAYMENTS BY LENDER: If you are exchanged to pay, on my behalf, charges I am chigated to pay (such as property insurance premiums), then you may freet those payments made by you as advances and add thom to the unpaid principal under this note, or you may demend immediate payment of the charges.

SET-OFF: I oppor that you may set off any amount due and payable under this note squared any right I have to receive meansy from you.

"Right to receive meany from you" masnes:

11 any deposit account beliance I here with you:

(2) any neavy ewed to me on an item presented to you or in your peasession for collection or exchanges and

(3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note of the time you set off. This total includes any beliance the due date for which you properly accolarate under this note.

If my right to receive money from you is also enwed by accounts who has not opped to pay this note, your right of set-off does not apply to my interest in the obligation and to any other amounts I could withfrew on my sole request or endorsement. Your right of set-off does not apply to an occurrit or other two-deferred retigment account.

You will not be liable for the disherer of any check when the disherer occurs because you set off this daht against any of my accounts. I agree to held you hermbes from any such claims arising as a result of your exercise of your light of set-off.

REAL ESTATE OR RESIDENCE SECURETY: If this note is secured by real estate or a residence that is personal property, the extenses of a default and your remarks for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest end, to the extent not prohibited by law and not contrary to the terms of the separate separate instrument, by the "Default" and "Romelles" paragraphs harein.

"Remailes" paragraphs harein.

"PEPAULT: I will be in default if any one or more of the following occur: (1) if fall to make a payment on time or in the amount duz; (2) if fall to keep the preparty bound, if required; (3) if fall to pay, or keep any promise, on any debt or agreement livre with your (4) any other creditor of mine attempts to solked any daht i owe him through court proceedings (5) if de, an dockered incompotent, make on easignment for the benefit of engines, or iscome insolvent (alther because my liabilities exceed my assets or I am unable to pay my debts as they become due! (6) I make any written statement a provide say financial information that is unmus or insecurate at the time it was provided; (7) if on or felt to do something which excess you to believe that you will have difficulty collecting the amount lowe you; (8) any colletoris excuring this rote is used in a manuar or far a purpose which threatens confiscation by a legal surfactivity of the store mainting out to change; (10) I fall to plant, cultivate and harvest oraps in due execute will commission that the store is compacted in the plant, cultivate and harvest oraps in due execute will commission to the conversion of highly procible faund or to the conversion of well-note to excessive oreston of highly modible to and or to the conversion of well-note

MEDIES: If I am in default on this note you have, but are not limited to,

G. Exhibit M.

HEMEDIES: if I am in default on this note you have, but are not limited to, the following remedies:

(i) You may demand immediate payment of all I owe you under this note ignizingly, accurated impaid interest and other accurate charges).

(2) You may set off this dobt against any right I have to the payment of money from you, subject to the terms of the "Set-Off" paregraph herein.

(3) You may demand security, additional accurity, or additional perfect to be obligated to pay this note as a condition for not using any other remody.

(4) You may refuse to make advances to me or allow purchases on credit by me.

(5) You may use any remedy you have under state or federal law.

By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to decian an event to be a default if continues or happens again,

COLLECTION COSTS AND ATTORNEY'S FEEst I agree to pay all cents of collection, replayin or any other or similar type of cost if I am in default, addition, if you have any enter or similar type of cost if I am in default, addition, if you have any enter or similar type of cost if I am in default, addition, if you have any enter or similar type of cost if I am in default, addition, if you have an attorney to collect the course to pay one too, I also agree to pay any few you been with such attorney plus court conta (except where prohibited by law). To the extent permitted by the United States Bankruptry Code, I also agree to pay the reasonable attenty's free and costs you been to edicat this debt as awarded by any court exercising fursioning number the Benkruptry Code, I also agree to pay the reasonable attenty's free and costs you been to edicat this debt as awarded by any court exercising fursioning any may remove the entering the payment of anyonest one (exercising fursions).

require you to:

11 demand payment of amounts the (presentment):

12 obtain official certification of nonexyment foretest); or

13 give notice that amounts the have not been paid (notice of
Gistunor).

distance).
I walvo any defenses I have based on suretyship or impairment of

distanced.

I welve any defenses I have based on suretychip or impairment of collateral.

OBLIGATIONS INDEPENDENT: I understand that I must pay this note owen if someone clee has also agreed to pay it fay, for coomple, signing this form or a separate guerantee or endorsement. You may size me alone, or snyone clee when is collegated on this note, or any number of us together, to collect this note. You may do so without notice makes together, to collect this note. You may do so without notice that it has not been paid incide of dishamil. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewed of this note by all or has then all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extense this note or the debt represented by this note, or any perion of the note or disht, from time to time without finit or notice and for any term without affecting my lightly for payment that or notice and for any term without affecting my lightly for payment your prior written approval.

FINANCIAL INFORMATION: I agree to provide you, upon request, any financial statement or kidements or be made to you are or will be sourted, correct and complete.

HOTICE: Undoes otherwise required by law, any notice to me shall be given by delivering it or by making it by first class mail eddressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give any notice to you by making it first class to you my address stated on page 1 of this agmentent, or to any other address that you have designated.

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SOCROWER'S MANE AND ADDRESS	202 W MAIN	
SOSROWEP'S MAKE AND ADDRESS	PD 80X 208	Line of Credit No. 23875
Borrower's Name and Address	BATTLE CESET, HE 68715-0202	
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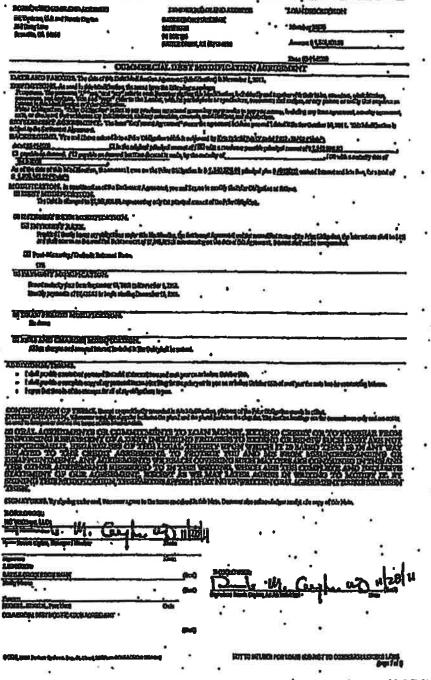


Exhibit 1 Page 1 of 2

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	Battle Creek State Bank v. BC Ventures 11.C et al. Case No. CIV 1501631
1	Battle Creek State Bank V. NC Ventures, 220, et al.
2	PROOF OF SERVICE
3	I, Rebecca Flores, declare under penalty of perjury under the laws of the State of California that the following facts are true and correct:
4	I am a citizen of the United States, over the age of eighteen years, and not a party to the within action. I am an employee of Berliner Cohen, LLP, and my business address is Ten Almaden
5	Boulevard, Eleventh Floor, San Jose, California 95113-2233. On August 6, 2015, I served the following document(s):
6	NOTICE OF ERRATA REGARDING EXHIBITS 1 and 2 TO FIRST AMENDED COMPLAINT
7	in the following manner:
8   9	by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, from the sending facsimile machine telephone number of
10	. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission
11	report was properly issued by the transmitting facsimile machine.
12	by placing the document(s) listed above in a scaled envelope with postage thereon fully prepaid, in the United States mail at San Jose, California addressed as set forth below.
13	by overnight mail by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.
14 15	by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
16	by e-mail or electronic transmission. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I cause the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
18	ATTORNEY FOR MARI SUSANNA DEMARSH, AN
19	INDIVIDUAL; MARI SUSANNA DEMARSH AS THE SPECIAL ADMINISTRATOR AND
20	EXECUTOR OF THE ESTATE OF MICHAEL REVELS CAYTON:
21	Robyn B. Christo, Esq.
22	Epstein Law Firm 369-B Third St.
23	San Rafael. CA 94901
24	I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service/Express Mail, Federal Express and other overnight mail services, to wit, that correspondence will be deposited with the United States Postal
25	Service/overnight mail service this same day in the ordinary course of business.
26	Executed on August 6, 2015, at San Jose, California.
27	REBECCA FLORES
28	J *

824-2905-8326v1 ;R\18508002

1	
2	PROOF OF SERVICE
3	I, Stephanie Richter, declare under penalty of perjury under the laws of the State of California that the following facts are true and correct:
5 6	I am a citizen of the United States, over the age of eighteen years, and not a party to the within action. I am an employee of Berliner Cohen, LLP, and my business address is Ten Almaden Boulevard, Eleventh Floor, San Jose, California 95113-2233. On August 7, 2015, I served the following document(s):
7	NOTICE OF PENDENCY OF ACTION IN CIVIL COURT RE: REJECTED CREDITOR'S CLAIM
8	in the following manner:
9   10	by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, from the sending facsimile machine telephone number of . The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of
11	the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.
13	by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Jose, California addressed as set forth below.
14	by overnight mail by placing the document(s) listed above in a sealed overnight mail envelope with postage thereon fully prepaid, addressed as set forth below.
15 16	by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
17 18	by e-mail or electronic transmission. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I cause the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
19	SEE ATTACHED EXHIBIT "A"
20	I am readily familiar with my firm's practice for collection and processing of correspondence
21 22	for mailing with the United States Postal Service/Express Mail, Federal Express and other overnight mail services, to wit, that correspondence will be deposited with the United States Postal Service/overnight mail service this same day in the ordinary course of business.
23	Executed on August 7, 2015 at San Jose, California.
24	A
25	REBECCA FLORES
26	
27	
28	

#### Exhibit A

Mari DeMarsh 234 Currey Lane Sausalito, CA 94965

Mari DeMarsh C/O Robin Christo, Esq. The Epstein Law Firm 369-B Third Street #162 San Rafael, CA 94901

Kelley L. Cayton 50 Sierra Ave. Piedmont, CA 94611

Kelley L. Cayton C/O Mercy Pet Hospital 6418 Tupelo Dr. Citrus Heights, CA 95621

Alanna DeMarsh 500 W 8<sup>TH</sup> Ave. Denver, CO 80204-4525

Ben Moscatello 2674 22<sup>nd</sup> St. San Francisco, CA 94110

# **EXHIBIT C**

1 RALPH J. SWANSON, CA STATE BAR NO. 67751 DAWN C. SWEATT, CA STATE BAR No. 238005 2 BERLINER COHEN TEN ALMADEN BOULEVARD 3 ELEVENTH FLOOR SAN JOSE, CALIFORNIA 95113-2233 JUL 2 1 2016 TELEPHONE: (408) 286-5800 4 FACSIMILE: (408) 998-5388 JAMES M. KIM, Court Executive Officer 5 ralph.swanson@berliner.com MARIN COUNTY SUPERIOR COURT dawn.sweatt@berliner.com By: E. Chais, Deputy 6 ATTORNEYS FOR PLAINTIFF BATTLE CREEK STATE 7 BANK SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN 8 9 10 BATTLE CREEK STATE BANK, CASE NO. CIV1501631 Plaintiff, SECOND AMENDED COMPLAINT FOR 11 12 v. 1. BREACH OF CONTRACT 2. FRAUDULENT TRANSFER 3. CONSTRUCTIVE TRUST 13 RC VENTURES, LLC, a Delaware limited liability corporation, aka RC VENTURES 4. FRAUDULENT CONVEYANCE 14 GROUP, LLC, a Delaware limited liability 5. BREACH OF FIDUCIARY DUTY corporation, and RC VENTURES GROUP II, LLC, a California limited liability corporation; 15 MARI #1, LLC, a Delaware limited liability 16 corporation; MARI SUSANNA DEMARSH, an individual; MARI SUSANNA DEMARSH 17 as the Special Administrator and Executor of the ESTATE OF MICHAEL REVELS 18 CAYTON; MARI SUSANNA DEMARSH as the Trustee of the REVELS MICHAEL 19 CAYTON TRUST, Dated August 2, 2014; MARKOU, LLC; REVELS M. CAYTON 20 MD, INC.; and DOES 1 through 20, inclusive, 21 Defendants. 22 23 Comes now Plaintiff BATTLE CREEK STATE BANK, and for its Second Amended Complaint alleges: 24 25 THE PARTIES 26 Plaintiff Battle Creek State Bank (hereinafter "Plaintiff" or "BCSB") is, and at all 1. 27 times relevant hereto was, a Nebraska banking corporation with its principal place of business in 28 Battle Creek, Nebraska. -1-4810-3820-9584v1 SECOND AMENDED COMPLAINT DSWEATT\18508002

- 2. Plaintiff is informed and believes and on that basis alleges that defendant RC Ventures, LLC is an unknown entity form with its principal place of business in the County of Marin, California and which at all times relevant hereto conducted business in the State of California, County of Marin.
- 3. Plaintiff is informed and believes and on that basis alleges that defendant RC Ventures Group, LLC, is a Delaware limited liability company with its principal place of business in the County of Marin, California, and which at all relevant times conducted business in the State of California, County of Marin.
- 4. Plaintiff is informed and believes and on that basis alleges that RC Ventures Group II, LLC, is a California limited liability company with its principal place of business in the County of Marin, California, and which at all relevant times conducted business in the State of California, County of Marin. Plaintiff is further informed and believes and on that basis alleges that RC Ventures Group II, LLC, is currently listed under the California Secretary of State's Business Portal web site as a suspended corporation.
- 5. Plaintiff is informed and believes and on that basis alleges that defendant RC Ventures, LLC, has also been known as and/or has done business as RC Ventures Group, LLC, or as RC Ventures Group II, LLC. (Hereinafter, RC Ventures, LLC; RC Ventures Group, LLC; and RC Ventures Group II, LLC, are sometimes collectively referred to for convenience as the "RC Entities.")
- 6. Plaintiff is informed and believes and on that basis alleges that MARI #1, LLC, is a Delaware limited liability company with its principal place of business in the County of Marin, California, and which at all relevant times conducted business in the State of California, County of Marin. (Hereinafter "MARI #1.")
- 7. Plaintiff is informed and believes and on that basis alleges that defendant Markou, LLC is a Nevada limited liability company with its principal place of business in the County of Marin, California, and which at all relevant times conducted business in the State of California, County of Marin.
  - 8. Plaintiff is informed and believes and on that basis alleges that defendant Mari

Susanna De Marsh (hereinafter "DeMarsh") is, and at all times relevant hereto was, an individual residing in the County of Marin, California.

- 9. Plaintiff is informed and believes and on that basis alleges that Michael Revels Cayton, aka Revels Cayton (hereinafter "Cayton"), was an individual, now deceased, who at all times relevant hereto resided in the County of Marin, California until his death on August 13, 2014.
- 10. Plaintiff is informed and believes and on that basis alleges that Revels M. Cayton, MD, Inc. (hereinafter "MD, Inc.") is a California corporation formed by Cayton for the purpose of running Cayton's medical practice in Oakland, California.
- Administer Estate of Cayton (Marin County Superior Court Case No. 1501377) filed by Plaintiff on April 15, 2015. The second petition, to Administer Estate of Cayton and Probate Will, was filed by DeMarsh on or about May 15, 2015 in Marin County Superior Court, Case No 1501831 ("DeMarsh's Petition"). In DeMarsh's Petition, DeMarsh contends she is the executor of Cayton's estate (the "Estate") and she attaches thereto a will allegedly executed by Cayton just days before his death. The Last Will and Testament of Revels Michael Cayton is dated August 2, 2014, and leaves all of Cayton's assets to DeMarsh (through the Trust).
- 12. Cayton created the Revels Michael Cayton Revocable Trust, which is also dated August 2, 2014 (the "Trust"). The Trust makes DeMarsh the successor trustee (unless she predeceases Cayton or refuses to serve) and the sole beneficiary. Accordingly, DeMarsh is sued herein in her capacity as successor trustee of the Trust, in addition to her individual capacity.
- 13. On June 29, 2015, DeMarsh was appointed Special Administrator for the Estate of Cayton in Case No. 1501377. Plaintiff then served DeMarsh in her capacity as the Special Administrator of the Estate of Cayton with its creditor's claim. The claim went unanswered and was deemed rejected by operation of law on or about August 3, 2015. Accordingly, DeMarsh is also sued herein in her capacity as Special Administrator of the Estate, in addition to her individual capacity.
- 14. The true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants named and sued herein as DOES 1 through 20, inclusive, are unknown to Plaintiff,

who therefore sues said Defendants by such fictitious names. Plaintiff will amend its Complaint to show their true names and capacities when the same have been ascertained. Plaintiff is informed and believes and on that basis alleges that each of the fictitiously named Defendants is in some way responsible for the events, transactions, omissions, and occurrences referred to herein and that Plaintiff's damages as herein alleged were proximately caused by those events, transactions, omissions and occurrences. Throughout this Complaint references to "Defendants" shall mean and refer to "Defendants and each of them," unless the context specifies otherwise.

- 15. Plaintiff is informed and believes and on that basis alleges that at all times relevant hereto, Defendants, and each of them, were the agents, servants, partners or co-conspirators of each other and, in doing the things herein alleged, were acting within the course and scope of such agency, service, partnership or conspiracy.
- 16. Plaintiff is informed and believes and on that basis alleges that the RC Entities and MARI #1 are member-managed limited liability companies that had only two members, Cayton and DeMarsh. Plaintiff is informed and believes and on that basis alleges that DeMarsh is now the only surviving member of the MARI #1 and the RC Entities.
- 17. Plaintiff is informed and believes and on that basis alleges that DeMarsh, and the MARI#1 and RC Entities are the alter egos of each other. Specifically, they commingled individual and corporate funds, failed to observe corporate formalities including maintaining minutes, and failed to contribute sufficient capital to sustain the MARI and RC Entities. There lacks such a unity of interest and ownership between MARI, each of the RC Entities and DeMarsh that the separate personalities of the limited liability companies and the owners do not exist. DeMarsh, MARI#1 and the RC Entities are jointly and severally liable for one another's debts because the failure to disregard the corporate entity would sanction a fraud or promote injustice.
- 18. In 2007 Cayton, through MARI #1, purchased a commercial property in Palmetto, Florida valued at or around three million dollars. (Hereinafter, the "Florida Property").
- 19. On or about September 26, 2008 BCSB loaned the sum of \$1,340,500.00 to RC Ventures, LLC (hereinafter "Loan"). The Loan was made pursuant to the terms of a "Line of Credit Agreement" and Promissory Note entered into between BCSB and RC Ventures, LLC and a personal

guarantee agreement executed by Cayton of the same date (hereinafter referred to as the "Original Loan Agreement"). True and correct copies of the Original Loan Agreement documents are attached hereto collectively as Exhibit 1 and incorporated herein by reference. Both RC Ventures, LLC and Cayton are identified as "Borrowers" in the Original Loan Agreement, and each of the Defendants was therefore jointly and severally liable for repayment of the entire amount of the Loan.

- 20. Among other things, the Original Loan Agreement required repayment in full of all amounts advanced to the Borrowers under its terms, plus all accrued interest, on or before September 26, 2009.
- 21. In making the Loan, BCSB relied upon the assets of Cayton, MARI #1 and RC Ventures, LLC that Cayton disclosed to BCSB at the time of the Loan. In addition to the assets and income of RC Ventures, LLC, BCSB also relied upon the real property and other assets of Cayton that he disclosed to BCSB in his application process for the Loan, including, but not limited to, the residence Cayton owned at 234 Currey Lane, Sausalito, California, APN 064-232-13 (hereinafter the "Currey Lane Property") and the Florida Property. (Hereinafter the Florida Property and Currey Lane Property are sometimes collectively referred to as the "Real Property"). Cayton had purchased the Currey Lane Property in 2006 as an unmarried man, which fact was disclosed to BCSB. Cayton also used the Currey Lane Property as the business address of his various business entities, which included the MARI #1 and RC Entities.
- 22. RC Ventures, LLC and Cayton later defaulted on the Original Loan Agreement. As a result, lawsuits involving several of the parties (plus others) were filed, which eventually resulted in the parties' entering into a written Settlement and Release Agreement in or about November 2011.
- 23. As required by the terms of the Settlement and Release Agreement, on November 1, 2011 RC Ventures, LLC and Cayton individually entered into a "Commercial Debt Modification Agreement" with BCSB (the "Modification Agreement"). A true and correct copy of the Modification Agreement is attached hereto as Exhibit 2 and incorporated herein by reference.
- 24. Among other things, the Modification Agreement reduced the amount due and owing on the Loan at that time to the total principal sum of \$1,340,500.00. The Loan was also modified to provide for repayment in equal monthly installments of seven thousand four hundred thirty-five

dollars and ninety-eight cents (\$7,435.98) commencing December 12, 2011 until fully paid (the "Installment Payments").

- 25. The interest rate provided for under the Modification Agreement was 3.0% per annum; however, in the event of a default, the interest rate was to increase to 16% per annum on the unpaid balance ("Default Rate"). The Modification Agreement also extended the maturity date of the Loan, as reflected in the Original Loan Agreement, to November 1, 2018.
- 26. Other than the aforementioned modifications, the Modification Agreement expressly stated that all of "the terms of the Prior Obligation [Original Loan Agreement] remain in effect." (Hereinafter, the Original Loan Agreement and the Modification Agreement will sometimes be collectively referred to as the "Agreement.")
- 27. Commencing December 12, 2011, and through August 2014, Defendants made all Installment Payments as required by the Agreement.
- 28. Plaintiff is informed and believes and on that basis alleges that Cayton died on August 13, 2014. The cause of death listed on the death certificate of Revels M. Cayton issued by the Marin County Public Health Department was "Cardiopulmonary Arrest; Prostate Cancer."
- 29. Plaintiff was unaware of Cayton's death until Installment Payments on the Agreement ceased to be made in January 2015. At that point Plaintiff investigated and learned that Cayton had died several months earlier, even though between August 2014 and January 2015 Installment Payments continued to be made by the RC Entities, checks for which were being signed by DeMarsh.
- 30. Plaintiff has also learned that in or about May 2014, without apparent consideration, Cayton transferred title to the Currey Lane Property to himself and DeMarsh as "joint tenants." At the time of such transfer both Cayton and DeMarsh knew that he was suffering from a fatal illness and would likely die in a short time. When Cayton in fact died just three months later, DeMarsh executed and recorded with the County of Marin an "Affidavit-Death of Joint Tenant," transferring title to the Currey Lane Property to herself as the surviving joint tenant with right of survivorship. Plaintiff is informed and believes and on that basis alleges that the Currey Lane Property is worth at least \$3,000,000 and has loans against it which total approximately \$2,000,000. Had the Currey

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Lane Property not been transferred to DeMarsh, the entirety of it would have been available as an asset to pay the debts owed by Cayton after he died.

- Plaintiff has also learned that in or about October 2014, after Cayton's death, 31. DeMarsh sold the Florida Property for \$3,000,000. Plaintiff is informed and believes and on that basis alleges that at the time of the sale by DeMarsh, the Florida Property was encumbered by a real estate mortgage of approximately \$2,100,000. At close of escrow, DeMarsh had the remaining proceeds from the sale (about \$850,000) ("Sale Proceeds") deposited into a personal bank account held jointly by her and Cayton.
- 32. Plaintiff is informed and believes and on that basis alleges that DeMarsh then used the Sale Proceeds to pay her company, Dezign Group, a sole proprietorship, more than \$250,000. She also paid from the Sale Proceeds her personal debts and transferred money from the bank account where the Sale Proceeds were deposited to the RC Entities and to MD, Inc. Plaintiff is informed and believes and on that basis alleges that DeMarsh formed an entity called Markou, LLC, and in January 2015, while she was the executor of the Estate and trustee of the Trust used assets traceable to the Estate, including the Sale Proceeds, to purchase for herself a 2012 Ferrari at a purchase price of approximately \$275,000.
- 33. Plaintiff is informed and believes and on that basis alleges that DeMarsh has taken possession and control of all of MARI #1's, RC Entities' and Cayton's remaining assets, including cash and real property, which would have been available to pay the debt owed to BCSB. Further, DeMarsh had been actively involved in managing the affairs of MARI #1 and the RC Entities when Cayton was alive and was well aware of the obligation owed by the RC Entities and Cayton himself under the Loan and the Agreement.
- 34. At the time of filing this complaint, the outstanding balance owed under the Agreement was \$1,103,552.67, with interest continuing to accrue at the Default Rate since March 13, 2015.

#### FIRST CAUSE OF ACTION [FOR BREACH OF CONTRACT AGAINST ALL DEFENDANTS]

35. The allegations of Paragraphs 1 through 34 are re-alleged and incorporated herein by

this reference, and Plaintiff further alleges as follows:

- 36. A written contract exists between BCSB and Defendants (the Agreement), as reflected in Exhibits 1 and 2 attached hereto and incorporated herein.
- 37. Plaintiff has performed all of the terms and conditions required of it under the Agreement.
- 38. Defendants have breached the written contract by failing to pay back the sums owed when due. Specifically, Defendants have been in default of the obligation to make the Installment Payments since January 2015.
- 39. The Agreement contains an acceleration clause entitling Plaintiff to demand and sue for the full amount due, plus all accrued interest, if the Loan goes into default. Although not required under the Agreement, Plaintiff made a written demand to Defendants on April 10, 2015 for full payment of the entire amount due on the Loan, but despite demand therefor, payment has not been made and Plaintiff now elects to accelerate the full balance.
- 40. The Agreement contains an attorneys' fees clause, under which Plaintiff is entitled to recover all fees and costs (including attorneys' fees) incurred in having to enforce the Agreement and to collect on the Loan.
- 41. As a direct and proximate result of Defendants' breach of the Agreement, BCSB has been damaged in the amount of the balance due and owing of \$1,103,552.67, plus interest at the Default Rate from and after March 13, 2015, until paid. Plaintiff has also had to retain the services of the undersigned law firm in order to collect on the Loan and enforce the Agreement, and as a result, Plaintiff has incurred additional recoverable costs and attorneys' fees in an amount to be proved.

WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

### <u>SECOND CAUSE OF ACTION</u> [FOR FRAUDULENT TRANSFER AGAINST ALL DEFENDANTS]

- 42. The allegations of Paragraphs 1 through 34 are re-alleged and incorporated herein by this reference, and Plaintiff further alleges as follows:
  - 43. Plaintiff is informed and believes and on that basis alleges that at various times

between January 2014 to the present, MARI #1, the RC Entities, Cayton and DeMarsh have transferred assets, including money and the Real Property, to DeMarsh for no or less than adequate consideration.

- 44. Plaintiff is informed and believes and on that basis alleges that Defendants acted with the intent and purpose to transfer the assets and the Real Property from Cayton to themselves in order to hinder, delay, or defraud BSCB, which is a creditor of Cayton and the Estate.
- 45. Plaintiff is informed and believes and on that basis alleges that such fraudulent transfers include, but are not limited to, the monies and assets of the RC Entities, which were transferred to one another and/or to DeMarsh, as well as the Currey Lane Property transferred from Cayton to DeMarsh less than three (3) months before his imminent death without adequate consideration, and the Florida Property sold by DeMarsh six weeks after Cayton's death.
- 46. As a direct and proximate result of Defendants' wrongful and intentional conduct, Plaintiff has been harmed and damaged in the amount of the balance due and owing of \$1,103,552.67, plus interest at the Default Rate from and after March 13, 2015, until paid. Plaintiff has also had to retain the services of the undersigned law firm in order to collect on the Loan and enforce the Agreement, and as a result, Plaintiff has incurred additional recoverable costs and attorneys' fees in an amount to be proved.
- 47. Defendants committed the acts herein alleged maliciously, fraudulently and with the wrongful and deliberate intention of injuring Plaintiff and benefiting themselves, and acted with an improper motive amounting to malice and conscious disregard of Plaintiff's rights. Accordingly, Plaintiff is entitled to recover punitive and exemplary damages from Defendants.

WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

# THIRD CAUSE OF ACTION [FOR CONSTRUCTIVE TRUST AGAINST DEMARSH INDIVIDUALLY, DMARSH AS THE EXECUTOR AND SPECIAL ADMINISTARTOR OF CAYTON'S ESTATE, DEMARSH AS TRUSTEE OF CYATON'S TRUST, AND DOES 1-20]

- 48. The allegations of Paragraphs 1 through 34 are re-alleged and incorporated herein by this reference, and Plaintiff further alleges as follows:
  - 49. Plaintiff is informed and believes and on that basis alleges that DeMarsh has

wrongfully, by way of undue influence, fraudulent transfer, or other wrongful act, taken possession of Cayton's, MARI #1's and the RC Entities' money and assets, including the Real Property and any proceeds therefrom, that would be available to BCSB as a creditor of Cayton and the RC Entities to collect the amount due and owing to BCSB. In addition to the money and assets of the RC Entities and MARI #1, BCSB also relied upon the Florida Property and Currey Lane Property in deciding whether to make the loan to Cayton, because Cayton represented to BCSB that he owned one hundred percent of the Real Property.

- 50. By virtue of DeMarsh's wrongful acts, as aforesaid, she holds the converted funds and/or Real Property, to the extent of the amount owed to Plaintiff on the Loan, in trust for Plaintiff.
- 51. As a direct and proximate cause of Defendants' wrongful conduct, BCSB has been damaged in the amount of the balance due and owing of \$1,103,552.67, plus interest at the Default Rate from and after March 13, 2015, until paid. Plaintiff has also had to retain the services of the undersigned law firm in order to collect on the Loan and enforce the Agreement, and as a result, Plaintiff has incurred additional recoverable costs and attorneys' fees in an amount to be proved.

WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

# FOURTH CAUSE OF ACTION [FRAUDULENT CONVEYANCE AGAINST DEMARSH INDIVIDUALLY, DEMARSH AS SPECIAL REPRESENTATIVE AND EXECUTOR OF THE ESTATE OF CAYTON, DEMARSH AS TRUSTEE OF THE CAYTON TRUST AND DOES 1-20]

- 52. The allegations of Paragraphs 1 through 34 are re-alleged and incorporated herein by this reference, and Plaintiff further alleges as follows:
- 53. In making the Loan, BCSB relied upon the assets of Cayton disclosed to BCSB at the time of the Loan, including the Currey Lane Property.
- 54. Cayton had purchased the Currey Lane Property in 2006 as an unmarried man, which fact was disclosed to BCSB.
- 55. The transfer to DeMarsh of the Currey Lane Property, as aforesaid, was made without adequate consideration therefor and with the intent to hinder, delay or defraud creditors of Cayton, including BCSB.
  - 56. Plaintiff is informed and believes and on that basis alleges that the Currey Lane

Property is worth at least \$3,000,000 and has loans against it which total approximately \$2,000,000.

- 57. At the time of the conveyance of the Currey Lane Property without adequate consideration, Plaintiff was a "creditor" having a "claim" against Cayton and his "assets," including the Currey Lane Property, as such terms are defined in California Civil Code section 3439.01.
- 58. As a direct and proximate cause of Defendants' wrongful conduct, BCSB has been damaged in the amount of the balance due and owing of \$1,103,552.67, plus interest at the Default Rate from and after March 13, 2015, until paid. Plaintiff has also had to retain the services of the undersigned law firm in order to collect on the Loan and enforce the Agreement, and as a result, Plaintiff has incurred additional recoverable costs and attorneys' fees in an amount to be proved.

WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

## FIFTH CAUSE OF ACTION [FOR BREACH OF FIDUCIARY DUTY AGAINST DEMARSH INDIVIDUALLY AND DEMARSH AS TRUSTEE OF THE CAYTON TRUST]

- 59. The allegations of Paragraphs 1 through 34 are re-alleged and incorporated herein by this reference, and Plaintiff further alleges as follows:
- 60. As the trustee under Cayton's Trust, DeMarsh had the duty to locate and take possession of the Trust assets, and to develop an investment strategy suited to the purpose of the Trust. (See Cal. Probate Code §§16006 and 16049.)
- 61. DeMarsh owed a duty to BCSB equivalent to that of a trustee or administrator of an estate who owes fiduciary duties to the estate's beneficiaries. (*Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal. App. 4th 802, 825-826, citing *Farmers etc. Nat. Bank v. Peterson* (1936) 5 Cal.2d 601, 603–607.)
- 62. Cayton's living/revocable trust was liable for the debts of Cayton. When he died, the Trust became permanent and irrevocable. However, the debt to BCSB still remained and BCSB as a creditor has rights against the Trust to collect the money owed, since the Trust was revocable as of the date of Cayton's death.
- 63. DeMarsh concealed Cayton's death from BCSB, failed to serve a notice to creditors, failed to marshal the assets of Cayton's estate, and failed to properly and proportionately pay the creditors of Cayton's Estate.

1	64. Because DeMarsh, the successor trustee and sole beneficiary, did not pay the debt						
2	BCSB or marshal all the assets and debts of the Estate before singling out specific creditors f						
3	payment, but instead distributed the Trust assets to herself and/or for the benefit of herself, DeMarsh						
4	became liable to BCSB in the amount of Trust assets she distributed to herself or for her benefit						
5	(Cal. Pro. Code § 19400.)						
6	65. As a direct and proximate cause of DeMarsh's bad faith and self-dealing, BCSB w						
7	harmed in the amount DeMarsh received from Cayton's Estate or that was paid or expended for her						
8	benefit.						
9	WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.						
10	PRAYER FOR RELIEF						
11	TRATER FOR RELIEF						
12	For All Causes of Action						
13	1. For general damages in the sum of \$1,103,552.67;						
14	2. For interest at the Default Rate of 16% per annum since March 13, 2015 ;						
15	3. For all costs incurred;						
16	4. For reasonable attorneys' fees;						
17	5. For all other relief the Court deems just and proper.						
18	For the Second Cause of Action						
19	1. For punitive damages as warranted.						
20	For the Third Cause of Action						
21	1. For an order declaring that Defendant DeMarsh hold the Real Property and any oth						
22	assets of Cayton over which she now exercises control in trust for Plaintiff.						
23	For the Fourth Cause of Action						
24	1. For an order voiding the May 2014 conveyance of title of the Currey Lane Property						
25	Cayton and DeMarsh as "joint tenants."						
26	For the Fifth Cause of Action						
27	1. For an order voiding all distributions from the Estate to DeMarsh and those for h						
28	benefit, including, but not limited to, payments to Dezign Group, Markou, LLC, CitiBank, Bank						
İ	-12-						

## Case 3:16-cv-04984-JD Document 1 Filed 08/30/16 Page 68 of 88

`}						
1	America, and American Express, among others.					
2						
3	DATED: JULY <u>Zo</u> , 2016 BERLINER COHEN					
4						
5	BY: RALPH SWANSON	-				
6	RALPH SWANSON DAWN C. SWEATT ATTORNEYS FOR PLAINTIFF BATTLE CREEK					
7	ATTORNEYS FOR PLAINTIFF BATTLE CREEK STATE BANK					
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Case 3:16-cv-04984-JD Document 1 Filed 08/30/16 Page 69 of 88

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FIRST CLASS DAY

\$01.579



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B BERLINER COHEN

Berliner Cohen, LLP TEN ALMADEN BOULEVARD, ELEVENTH FLOOR SAN JOSE, CALIFORNIA 95113-2233

18508-002

Eugene Brown, Jr.
Sedgwick LLP
333 Bush St., 30th Fl.
San Francisco, CA 94104

## **EXHIBIT D**

## AMENDED SUMMONS TO SECOND AMENDED COMPLAINT (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: RC VENTURES, LLC, a Delaware limited liability corporation, aka (AVISO AL DEMANDADO): RC VENTURES GROUP, LLC, a Delaware limited liability corporation, and RC VENTURES GROUP II, LLC, a California limited liability corporation; MARI #1, LLC, a Delaware limited liability corporation; MARI SUSANNA DEMARSH, an individual; MARI SUSANNA DEMARSH as the Special Administrator and Executor of the ESTATE OF MICHAEL REVELS CAYTON; MARI SUSANNA DEMARSH as the Trustee of the REVELS MICHAEL CAYTON TRUST, Dated August 2, 2014; MARKOU, LLC; REVELS M. CAYTON MD, INC.; and DOES 1 through 20, inclusive.

YOU ARE BEING SUED BY PLAINTIFF: Battle Creek State Bank (LO ESTÁ DEMANDANDO EL DEMANDANTE):

SUM-100 [Rev. July 1, 2009]

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)



JUL 2 7 2016

JAMES M. KIM, Court Executive Officer MARIN COUNTY SUPERIOR COURT By: C. Lucchesi, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfnelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gow/selfnelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. [AVISO] Lo han demandado. Si no responde dentro de 30 dles, le corte puede decidir en su contra sin escuchar su versión. Lee le información e continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta code y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que ester en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dá un formulario de exención de pago de cuotas. Si no presenta su respueste a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

que la da un intimutanto de exencion de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcatitornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuolas y los costos exentos por imponer un gravamen sobre oualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

cualquier recuperación de \$10,0	000 ó más de valor recibida mediante	e un acuerdo o una conce	sión de arbitraje en un caso de d	erecho civil. Tiene que										
The name and address of the	iinas uu uuu ia conta duada dasacna	r er caso.												
(El nombre y dirección de la c	corte es):		CASE NUMBER: (Número del Caso):											
SUPERIOR COURT OF	CALIFORNIA, COUNTY O	OF MARIN	CIV 1501631											
3501 CIVIC CENTER	DRIVE													
P.O. BOX 4988														
SAN RAFAEL, CA 94903														
The name, address, and telephone number of plaintiffs attorney, or plaintiff without an attorney, is:														
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):														
RALPH J. SWANSON,	CSB #67751		(408) 286-5800 (40	181 998-5388										
DAWN C. SWEATT, CS	B #238005		(100) 200 3000 (40	701 220 2300										
BERLINER COHEN, 10	ALMADEN BLVD. STE	. 1100												
SAN JOSE, CA _ 9511	3-2233													
SAN JOSE CA 7 2016 DATE: JUL 2 7 2016	JAMES M. KIM	Clerk, by	LUCCHESI	, Deputy										
(Fecha)		(Secretario)												
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  (Adjunto)														
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).														
	NOTICE TO THE PERSON S	FRVFD: You are serve	ons, (7-03-070)).											
(SEAL)	1. as an individual defe		54											
- Com														
2. as the person sued under the fictitious name of (specify):														
3. on behalf of (specify): Markey, LLC														
SEAL) 3. (Specify): /Var Roy, 222														
(52:2-)	under: CCP 416.10	(composition)												
CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)														
							other (specify): Lurps C. 17+01. (6 (LLC)							
								4. by personal delivery	on (date):	()	Page 1 of 1			
Form Adopted for Mandatory Use Judicial Council of Colfornia		SUMMONS	Legal Code of	Civil Procedure \$5 412.20, 465										

## **EXHIBIT E**

1 2 3 4 5 6	SEDGWICK LLP EUGENE BROWN, JR., ESQ. (State Bar No. 7 eugene.brown@sedgwicklaw.com AMEE A. MIKACICH, ESQ. (State Bar No. 146 amee.mikacich@sedgwicklaw.com SUNNY S. SHAPIRO, ESQ. (State Bar No. 221 sunny.shapiro@sedgwicklaw.com 333 Bush Street, 30th Floor San Francisco, CA 94101-2834 Telephone: 415.781.7900 Facsimile: 415.781.2635	6814)			
7 8 9 10 11	CAYTON TRUST Dated August 4, 2014				
12 13	SUPERIOR COURT OF THE STATE OF CALIFORNIA				
14	COUNTY OF MARIN				
15	BATTLE CREEK STATE BANK,	CASE NO. CIV 1501631			
15 16	BATTLE CREEK STATE BANK,  Plaintiff,				
		ANSWER TO SECOND AMENDED COMPLAINT FOR:			
16	Plaintiff, v. RC VENTURES, LLC, a Delaware limited	ANSWER TO SECOND AMENDED COMPLAINT FOR:			
16 17	Plaintiff, v.  RC VENTURES, LLC, a Delaware limited liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability	ANSWER TO SECOND AMENDED COMPLAINT FOR:  1. BREACH OF CONTRACT 2. FRAUDULENT TRANSFER			
16 17 18	Plaintiff,  v.  RC VENTURES, LLC, a Delaware limited liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability corporation, and RC VENTURES GROUP II, LLC, a California limited liability	ANSWER TO SECOND AMENDED COMPLAINT FOR:  1. BREACH OF CONTRACT 2. FRAUDULENT TRANSFER 3. CONSTRUCTIVE TRUST			
16 17 18 19 20	Plaintiff,  v.  RC VENTURES, LLC, a Delaware limited liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability corporation, and RC VENTURES GROUP II, LLC, a California limited liability corporation; MARI #1, LLC, a Delaware	ANSWER TO SECOND AMENDED COMPLAINT FOR:  1. BREACH OF CONTRACT 2. FRAUDULENT TRANSFER			
16 17 18 19 20 21	Plaintiff,  v.  RC VENTURES, LLC, a Delaware limited liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability corporation, and RC VENTURES GROUP II, LLC, a California limited liability corporation; MARI #1, LLC, a Delaware limited liability corporation; MARI SUSANNA DEMARSH, an individual;	ANSWER TO SECOND AMENDED COMPLAINT FOR:  1. BREACH OF CONTRACT 2. FRAUDULENT TRANSFER 3. CONSTRUCTIVE TRUST 4. FRAUDULENT CONVEYANCE			
16 17 18 19 20 21 22	Plaintiff,  v.  RC VENTURES, LLC, a Delaware limited liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability corporation, and RC VENTURES GROUP II, LLC, a California limited liability corporation; MARI #1, LLC, a Delaware limited liability corporation; MARI SUSANNA DEMARSH, an individual; MARI SUSANNA DEMARSH, as the Special Administrator and Executor of the	ANSWER TO SECOND AMENDED COMPLAINT FOR:  1. BREACH OF CONTRACT 2. FRAUDULENT TRANSFER 3. CONSTRUCTIVE TRUST 4. FRAUDULENT CONVEYANCE			
16 17 18 19 20 21 22 23	Plaintiff,  v.  RC VENTURES, LLC, a Delaware limited liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability corporation, and RC VENTURES GROUP II, LLC, a California limited liability corporation; MARI #1, LLC, a Delaware limited liability corporation; MARI SUSANNA DEMARSH, an individual; MARI SUSANNA DEMARSH, as the Special Administrator and Executor of the ESTATE OF MICHAEL REVELS CAYTON; MARI SUSANNA DEMARSH,	ANSWER TO SECOND AMENDED COMPLAINT FOR:  1. BREACH OF CONTRACT 2. FRAUDULENT TRANSFER 3. CONSTRUCTIVE TRUST 4. FRAUDULENT CONVEYANCE			
16 17 18 19 20 21 22	Plaintiff,  v.  RC VENTURES, LLC, a Delaware limited liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability corporation, and RC VENTURES GROUP II, LLC, a California limited liability corporation; MARI #1, LLC, a Delaware limited liability corporation; MARI SUSANNA DEMARSH, an individual; MARI SUSANNA DEMARSH, as the Special Administrator and Executor of the ESTATE OF MICHAEL REVELS CAYTON; MARI SUSANNA DEMARSH, as the Trustee of the REVELS MICHAEL	ANSWER TO SECOND AMENDED COMPLAINT FOR:  1. BREACH OF CONTRACT 2. FRAUDULENT TRANSFER 3. CONSTRUCTIVE TRUST 4. FRAUDULENT CONVEYANCE			
16 17 18 19 20 21 22 23	Plaintiff,  v.  RC VENTURES, LLC, a Delaware limited liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability corporation, and RC VENTURES GROUP II, LLC, a California limited liability corporation; MARI #1, LLC, a Delaware limited liability corporation; MARI SUSANNA DEMARSH, an individual; MARI SUSANNA DEMARSH, as the Special Administrator and Executor of the ESTATE OF MICHAEL REVELS CAYTON; MARI SUSANNA DEMARSH, as the Trustee of the REVELS MICHAEL CAYTON TRUST, Dated August 2, 2014; MARKOU, LLC; REVELS M. CAYTON	ANSWER TO SECOND AMENDED COMPLAINT FOR:  1. BREACH OF CONTRACT 2. FRAUDULENT TRANSFER 3. CONSTRUCTIVE TRUST 4. FRAUDULENT CONVEYANCE			
16 17 18 19 20 21 22 23 24	Plaintiff,  v.  RC VENTURES, LLC, a Delaware limited liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability corporation, and RC VENTURES GROUP II, LLC, a California limited liability corporation; MARI #1, LLC, a Delaware limited liability corporation; MARI SUSANNA DEMARSH, an individual; MARI SUSANNA DEMARSH, as the Special Administrator and Executor of the ESTATE OF MICHAEL REVELS CAYTON; MARI SUSANNA DEMARSH, as the Trustee of the REVELS MICHAEL CAYTON TRUST, Dated August 2, 2014;	ANSWER TO SECOND AMENDED COMPLAINT FOR:  1. BREACH OF CONTRACT 2. FRAUDULENT TRANSFER 3. CONSTRUCTIVE TRUST 4. FRAUDULENT CONVEYANCE			
16 17 18 19 20 21 22 23 24 25	Plaintiff,  v.  RC VENTURES, LLC, a Delaware limited liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability corporation, and RC VENTURES GROUP II, LLC, a California limited liability corporation; MARI #1, LLC, a Delaware limited liability corporation; MARI SUSANNA DEMARSH, an individual; MARI SUSANNA DEMARSH, as the Special Administrator and Executor of the ESTATE OF MICHAEL REVELS CAYTON; MARI SUSANNA DEMARSH, as the Trustee of the REVELS MICHAEL CAYTON TRUST, Dated August 2, 2014; MARKOU, LLC; REVELS M. CAYTON MD, INC.; and DOES 1 through 20,	ANSWER TO SECOND AMENDED COMPLAINT FOR:  1. BREACH OF CONTRACT 2. FRAUDULENT TRANSFER 3. CONSTRUCTIVE TRUST 4. FRAUDULENT CONVEYANCE			
16 17 18 19 20 21 22 23 24 25 26	Plaintiff,  v.  RC VENTURES, LLC, a Delaware limited liability corporation, aka RC VENTURES GROUP, LLC, a Delaware limited liability corporation, and RC VENTURES GROUP II, LLC, a California limited liability corporation; MARI #1, LLC, a Delaware limited liability corporation; MARI SUSANNA DEMARSH, an individual; MARI SUSANNA DEMARSH, as the Special Administrator and Executor of the ESTATE OF MICHAEL REVELS CAYTON; MARI SUSANNA DEMARSH, as the Trustee of the REVELS MICHAEL CAYTON TRUST, Dated August 2, 2014; MARKOU, LLC; REVELS M. CAYTON MD, INC.; and DOES 1 through 20, inclusive,	ANSWER TO SECOND AMENDED COMPLAINT FOR:  1. BREACH OF CONTRACT 2. FRAUDULENT TRANSFER 3. CONSTRUCTIVE TRUST 4. FRAUDULENT CONVEYANCE			

-1ANSWER TO SECOND AMENDED COMPLAINT

Sedgwick

83691614v1

COME NOW, Defendants MARI SUSANNA DEMARSH, an individual; MARI SUSANNA DEMARSH, as the Special Administrator and Executor of the ESTATE OF REVELS MICHAEL CAYTON; MARI SUSANNA DEMARSH, as the Trustee of the REVELS MICHAEL CAYTON TRUST, Dated August 4, 2014; and MARKOU, LLC; and by way of Answer to the Second Amended Complaint ("Complaint") and pursuant to the terms of California Code of Civil Procedure Section 431.30, denies generally each and every allegation of the complaint. Defendant further specifically denies that it is liable to plaintiff in any sum or sums whatsoever, or at all, for special, compensatory, punitive or any other type of damage.

AND AS FOR A FIRST, SEPARATE DISTINCT AND AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

That the complaint, and each cause of action stated therein, fails to state facts sufficient to constitute a cause of action.

AND AS FOR A SECOND, SEPARATE DISTINCT AND AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

That neither the complaint, nor any of the alleged causes of action therein, state facts sufficient to constitute a cause of action for equitable relief against this answering defendant.

AND AS FOR A THIRD, SEPARATE DISTINCT AND AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

That the complaint fails to properly invoke the equity jurisdiction of the court.

AND AS FOR A FOURTH, SEPARATE DISTINCT AND AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

That this court lacks personal jurisdiction as to this answering defendant.

AND AS FOR A FIFTH, SEPARATE DISTINCT AND AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

That the applicable statutes of limitations, including but not limited to, C.C.P. sections 337 and 339 bar the complaint and each cause of action stated therein.

AND AS FOR A SIXTH, SEPARATE DISTINCT AND AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

	1	That the complaint, and each cause of action stated therein is ambiguous and uncertain.
	2	AND AS FOR A SEVENTH, SEPARATE DISTINCT AND AFFIRMATIVE
	3	DEFENSE, DEFENDANTS ALLEGE:
	4	That the complaint is barred by the doctrine of modification pursuant to Civil Code
	5	sections 1697 and/or 1698.
	6	AND AS FOR AN EIGHTH, SEPARATE DISTINCT AND AFFIRMATIVE
	7	DEFENSE, DEFENDANTS ALLEGE:
	8	That the complaint is barred by the doctrines of waiver and estoppel.
	9	AND AS FOR A NINTH, SEPARATE DISTINCT AND AFFIRMATIVE
	10	DEFENSE, DEFENDANTS ALLEGE:
•	11	That plaintiff has unreasonably delayed the commencement of this action and prejudiced
	12	this answering defendant such that the doctrine of laches bars the complaint and each cause of
	13	action therein.
	14	AND AS FOR A TENTH, SEPARATE DISTINCT AND AFFIRMATIVE
	15	DEFENSE, DEFENDANTS ALLEGE:
	16	That plaintiff's damages, if any, are completely or in part the result of plaintiff's failure to
	17	mitigate as required by law.
	18	AND AS FOR AN ELEVENTH, SEPARATE DISTINCT AND AFFIRMATIVE
	19	DEFENSE, DEFENDANTS ALLEGE:
	20	That the complaint is barred by the doctrine of rescission pursuant to Civil Code sections
	21	1533, 1566, 1688 and/or 1689.
	22	AND AS FOR A TWELFTH, SEPARATE DISTINCT AND AFFIRMATIVE
	23	DEFENSE, DEFENDANTS ALLEGE:
	24	That the complaint is barred by the doctrine of unjust enrichment.
	25	AND AS FOR A THIRTEENTH, SEPARATE DISTINCT AND AFFIRMATIVE
C.K.us	26	DEFENSE, DEFENDANTS ALLEGE:
Sedgwick	27	That the complaint is barred by the doctrine of mistake pursuant to Civil Code section
Š Š	28	1567, et seq.

	1 1	AND AS FOR A FOURTEENTH, SEPARATE DISTINCT AND AFFIRMATIVE
	2	DEFENSE, DEFENDANTS ALLEGE:
	3	That the complaint is barred by the doctrine of partial performance.
	4	AND AS FOR A FIFTEENTH, SEPARATE DISTINCT AND AFFIRMATIVE
	5	DEFENSE, DEFENDANTS ALLEGE:
	6	That the complaint is barred by the doctrine of substantial performance.
	7	AND AS FOR AN SIXTEENTH, SEPARATE DISTINCT AND AFFIRMATIVE
	8	DEFENSE, DEFENDANTS ALLEGE:
	9	That the complaint is barred by the doctrine of impossibility or impracticality of
	10	performance pursuant to Civil Code Sections 1441, 1511, 1595, 1596, and/or 1597.
	11	AND AS FOR A SEVENTEENTH, SEPARATE DISTINCT AND AFFIRMATIVE
	12	DEFENSE, DEFENDANTS ALLEGE:
	13	That the complaint is barred by delay attributable to plaintiff.
	14	AND AS FOR A EIGHTEENTH, SEPARATE DISTINCT AND AFFIRMATIVE
	15	DEFENSE, DEFENDANTS ALLEGE:
	16	That plaintiff's damages, if any, are uncertain and therefore barred by Civil Code Section
	17	3301.
	18	AND AS FOR A NINETEENTH, SEPARATE DISTINCT AND AFFIRMATIVE
	19	DEFENSE, DEFENDANTS ALLEGE:
,	20	That plaintiff is not in privity of contract.
	21	AND AS FOR A TWENTIETH, SEPARATE DISTINCT AND AFFIRMATIVE
	22	DEFENSE, DEFENDANTS ALLEGE:
	23	That the complaint is barred by the doctrine of novation pursuant to Civil Code Sections
	24	1530-1532.
	25	AND AS FOR A TWENTY-FIRST, SEPARATE DISTINCT AND AFFIRMATIVE
K.	26	DEFENSE, DEFENDANTS ALLEGE:
Sedgwick	27	That the complaint is barred by the doctrine of release pursuant to Civil Code section
ğ	28	1541.

	2 3	AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:						
	3							
	~	That the complaint is barred by the doctrine of accord and satisfaction pursuant to Civil						
	4	Code section 1521.						
	5	AND AS FOR A TWENTY-THIRD, SEPARATE DISTINCT AND						
	6	AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:						
	7	That the complaint is barred by the doctrine of account stated.						
	8	AND AS FOR A TWENTY-FOURTH, SEPARATE DISTINCT AND						
	9	AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:						
	10	That the defendants are not legally responsible for the acts, omissions, and/or obligations						
	11	of RC VENTURES, LLC, RC VENTURES GROUP II, LLC, and/or MARI #1, LLC, because						
	12	each such entity is separate and distinct from its individual shareholders and defendants are not						
	13	the alter egos of such entities.						
	14	AND AS FOR A TWENTY-FIFTH, SEPARATE DISTINCT AND AFFIRMATIVE						
	15	DEFENSE, DEFENDANTS ALLEGE:						
	16	The Complaint is barred by Probate Code §§ 16002, 16244, 16245, 16246, 19402, 19326						
	17	and 19402 as the liability does not exceed the value of the distribution.						
	18	AND AS FOR A TWENTY-SIXTH, SEPARATE DISTINCT AND AFFIRMATIVE						
	19	DEFENSE, DEFENDANTS ALLEGE:						
	20	The Complaint is barred by Probate Code § 19326 in that plaintiff is not an intended						
	21	beneficiary of the estate of Revels M. Cayton.						
	22	AND AS FOR A TWENTY-SEVENTH, SEPARATE DISTINCT AND						
	23	AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:						
	24	The claim for damages is barred by the Uniform Voidable Transaction Act pursuant to						
	25	C.C. § 3439.01, et seq.						
ck.	26	AND AS FOR A TWENTY-EIGHTH, SEPARATE DISTINCT AND						
Sedgwick	27	AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:						
Š	28							
83691614v	$_{v_1} \parallel$	-5-						

ANSWER TO SECOND AMENDED COMPLAINT

Plaintiff's damages, if any, are limited by the Aircraft Security Agreement, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference and resulting aircraft lien.

## AND AS FOR A TWENTY-NINTH, SEPARATE DISTINCT AND AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

The Complaint is barred by the doctrine of unclean hands.

## AND AS FOR A THIRTIETH, SEPARATE DISTINCT AND AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

The Complaint fails to state a claim for which punitive damages may be awarded.

## AND AS FOR A THIRTY-FIRST, SEPARATE DISTINCT AND AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

That plaintiff's complaint to the extent that it seeks exemplary or punitive damages pursuant to California Civil Code Section 3294, violates defendants' right to procedural due process under the Fourteenth Amendment of the United States Constitution, and Article I, Section 7 of the Constitution of the State of California, and therefore fails to state a cause of action upon which either punitive or exemplary damages can be awarded.

## AND AS FOR A THIRTY-SECOND, SEPARATE DISTINCT AND AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

That said complaint, to the extent that it seeks punitive or exemplary damages pursuant to California Civil Code Section 3294, violates defendant's right to protection from "excessive fines" as provided in the Eighth Amendment of the United States Constitution and Article I, Section 17 of the Constitution of the State of California, and violates defendant's right to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of California, and therefore fails to state a cause of action supporting the punitive or exemplary damages claimed.

# AND AS FOR A THIRTY-THIRD, SEPARATE DISTINCT AND AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

1	The transfer made to defendant which is alleged to be in fraud of plaintiff's rights w					
2	made in good faith and for reasonable value.					
3	AND AS FOR A THIRTY-FOURTH, SEPARATE DISTINCT AND					
4	AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:					
5	The Complaint is barred by the doctrine of dominion and control in that the defendant					
6	lacked control of the assets allegedly transferred.					
7	AND AS FOR A THIRTY-FIFTH, SEPARATE DISTINCT AND AFFIRMATIVE					
8	DEFENSE, DEFENDANTS ALLEGE:					
9	The Complaint is barred by Civil Code sections 2223, 2224, and 2224.5.					
10	<u>PRAYER</u>					
11	WHEREFORE, Defendants respectfully pray:					
12	1. That plaintiff take nothing by way of the complaint;					
13	2. A dismissal of the complaint with prejudice;					
14	3. An award of reasonable attorneys' fees to the extent permitted by law;					
15	4. Costs of suit according to proof herein; and					
16	5. Such other and further relief, either legal or equitable, as the Court may					
17	deem proper.					
18	DATED: August 25, 2016 SEDGWICK LLP					
19						
20	By: Amil a. Manne.					
21	EUGENE BROWN, JR., ESQ. AMEE A. MIK ACICH, ESQ.					
22	SUNNY S. SHAPIRO, ESQ. Attorneys for Defendants					
23	MARI SUSANNA DEMARSH, an individual;					
24	MARI SUSANNA DEMARSH, as the Special Administrator and Executor of the ESTATE OF					
25	REVELS MICHAEL CAYTON, erroneously sued as MICHAEL REVELS CAYTON; MARKOU,					
26	LLC; and MARI SUSANNA DEMARSH as the Trustee of the REVELS MICHAEL CAYTON					
27	TRUST, Dated August 4, 2014					
28						

ANSWER TO SECOND AMENDED COMPLAINT

**EXHIBIT A** 

### Above space for FAA Use Only

BATTLE CREEK STATE BANK (NEBRASKA) P.O. Box 308 Battle Creek, NE 68715

#### AIRCRAFT SECURITY AGREEMENT

THIS AIRCRAFT SECURITY AGREEMENT (the "Agreement"), is made on this 26th day of September, 2007 by RC Ventures, LLC, whose respective address(es) are as set forth beneath their respective signatures at the end of this Agreement ("Debtor") in favor of BATTLE CREEK STATE BANK (NEBRASKA), P.O. Box 308, Battle Creek, NE 68715 ("Bank").

#### RECITALS:

- (A) The Note. Debtor is indebted to Bank under a certain aircraft commercial note (the "Note") that is further described in a Closing Statement and Pay Proceeds Letter.
- (B) What is Secured. This Agreement secures the payment of: (1) the Note; (2) all costs and expenses incurred in the collection and enforcement of Bank's rights under the Note and this Agreement (collectively, the "Loan Documents"); (3) all future advances made by Bank for taxes, levies, insurance and repairs to or maintenance of the Aircraft; (4) all money advanced by Bank to fund the loan to or for the account of Debtor or the future obligations of Debtor under the Note and any advances by Bank to preserve its interests under this Agreement; and (5) interest on any such Bank advances as may be payable to Bank (collectively, the "Obligations").
- (C) Consideration. The consideration for the Note and this Agreement is the disbursement of the proceeds of the loan shown in the Note pursuant to the Closing Statement and Pay Proceeds Letter. To the extent that a certificate of deposit, bank account or investment securities are pledged with Bank as additional collateral, a separate security agreement will be used for such items.
- (D) (1) The Collateral. Bank's collateral (sometimes collectively called "Collateral") will be a security interest ("Security Interest") in the aircraft described below (the "Aircraft") and in any engines, motors, propellers, avionics, logbooks and other records, appliances, appurtenances, attachments, parts and equipment now forming part of the Aircraft or added to it later or, if not a part of, used in connection with the Aircraft. Substitutions, replacements and insurance proceeds will also be part of the Collateral. If Debtor leases or rents the Aircraft, Bank's Security Interest will extend to all rent due or to become due to Debtor from lease or rental use of the Aircraft. At Bank's request, Debtor will sign a more detailed written pledge or assignment of such rentals. If the primary use of the Aircraft changes from use by Debtor in Debtor's own business to lease or rental to others, Debtor must first notify Bank in writing and receive Bank's written approval. If execution of this Agreement was a condition of approving lease or rental as the primary use of the Aircraft, this Agreement shall supersede any prior security agreement covering the Aircraft in favor of Bank. Any commercial guaranty, letter of credit or other commercial security given by any person to Bank as security for the specific Obligations of Debtor under the Note or this Agreement or for other commercial obligations of Debtor generally shall also be deemed to be Collateral for this loan. Debtor understands that Bank will treat this loan as a commercial loan from the inception of the loan, even if Debtor's use of the Aircraft changes from business to personal recreational use after the closing.
  - (2) Additional Collateral. (Describe, if any, but if space is inadequate, list on Schedule A hereto):

<sup>(</sup>E) Perfection of Security Interest, (1) Federal. Bank will perfect its Security Interest in the Aircraft and any engines having a rated horsepower of 750 or more and all items now or hereafter forming part of the Aircraft by filing this Agreement with the Federal Aviation Administration ("FAA"). If spare parts may be covered by an FAA filing of this Agreement, they also will be deemed covered thereby if set aside for the Aircraft. If spare parts cannot be so covered, they are covered by subsection (2) below.

<sup>(2)</sup> State. Bank may perfect its Security Interest in any logbooks, engines having a rated horsepower of less than 750, parts identified for use on the Aircraft, and any other Collateral not covered by (E)(1) above by filing UCC-1 Financing Statement(s) with the appropriate filing offices.

- (E) No Sale of Aircraft. Until the Note is satisfied, Debtor will not sell or dispose of the Aircraft or of any fractional or other interest in the Aircraft.
- (F) No Other Security Interests. Debtor will not give anyone other than Bank a security interest in the Aircraft.
- (G) No Liens or Encumbrances. Debtor will not allow any liens or encumbrances to exist against the Aircraft and will promptly satisfy and remove any liens or encumbrances on a public record against the Aircraft or of which Debtor otherwise becomes aware.
- (H) No Lease or Rental of Aircraft. The Aircraft will not be leased or rented without the prior written approval of Bank. Such approval is required irrespective of who provides the pilot. The lease or rental plan must also be approved in writing by Debtor's Aircraft insurer. Renting may require a different maintenance program under federal law and higher premium cost on Debtor's Aircraft insurance. Renting to or through a third party, such as a flight training school or a cargo or passenger charter service, also requires prior written approval of Bank and insurer.
- (1) Home Base. The Aircraft will be kept at the home airport shown in Section 2 of this Agreement. Debtor must notify Bank and Debtor's Aircraft insurer if Debtor is going to change the principal base for the Aircraft. No permanent change shall be made without the prior written consent of Bank and the Aircraft's insurer.
- (J) Maintenance.
  - (V) FAA Requirements. Maintenance of the Aircraft is Debtor's responsibility. Debtor must comply with all FAA maintenance and repair directives that apply to Debtor's use of the Aircraft. Any change of use may cause more demanding maintenance directives to apply. e.g. if the Aircraft is leased or rented out.
  - (vi) Bank Requirements. Bank may require, and Debtor shall provide, a pre-purchase inspection by a FAA-certified mechanic. Debtor is also responsible for ensuring that the Aircraft at all times meets FAA minimum standards and shall provide all other necessary maintenance during the loan term, including maintaining the hull and all systems in good working order, in order to maintain the value of the Collateral. If required by Bank, Debtor will enroll the Aircraft in a manufacturer or other reasonably acceptable maintenance tracking program.
  - (Vii) Exceptions. The only exceptions to J(i) and (ii) above are for features of the Aircraft that are to be repaired or overhauled after this loan closes and which are noted in Bank's commitment letter to make this loan or on the related Closing Statement and Pay Proceeds Letter. Such repairs or equipment replacement must be completed within the time specified in the Closing Statement and Pay Proceeds Letter.
  - (Viii) Worn-out Items. Items material to safety or the value of the Aircraft that wear out over the course of this loan must be replaced before they become a flight risk, or if not a flight risk, within a reasonable time after they wear out, unless otherwise agreed by Bank, so as to maintain as nearly as possible the collateral value of the Aircraft.
- (K) Registration. The Aircraft will at all times be registered with the FAA in Debtor's name for the use to which it is being put and which has been approved by Bank and Debtor's Aircraft insurer.
- (L) Taxes, Fees, Assessments and Charges. Debtor will pay all taxes, assessments and charges imposed on the Aircraft by any national, state, county or municipal taxing authority or fees of a public or other airport authority. For example, and without limitation, Debtor will pay for any fees imposed on the Aircraft for landing and storage.
- (M) Insurance. (i) Kinds of Coverage. If required by Bank or applicable law. Debtor shall obtain and maintain (i) public liability insurance (including, without limitation, passenger liability and property damage insurance) with Bank named as additional insured to the extent permitted by applicable law. (ii) all risk aircraft ground and flight hull insurance, fire and extended coverage insurance against all risks of physical damage to or loss of the Aircraft, whether or not such loss occurs in flight, and (iii) such other insurance as Bank may reasonably request. The insurer must be qualified to write such insurance in the state where the Aircraft will be permanently based. Debtor may select the carrier or agent subject to the reasonable approval of Bank. Any carrier must be amenable to service of process in the continental United States, unless otherwise agreed in writing by Bank.
- (ii) Loss Payable Clause; Breach of Warranty Endorsement. The policy covering physical damage to or loss of the Aircraft shall contain a loss payable clause in favor of Bank, as interests may appear. The insurance policies shall contain breach of warranty

endorsements protecting Bank, even if Debtor violates one or more provisions of the policies. While breach of warranty coverage may protect Bank, Debtor's breach of any warranties to the insurer may result in the insurer paying Bank and suing Debtor for the loss. For this reason, Debtor must be familiar with Debtor's policy of insurance and make certain that adequate breach of warranty coverage is obtained. In addition, if Debtor rents out the Aircraft and does not have breach of warranty coverage for Debtor or have the rentee provide breach of warranty coverage for Debtor, Debtor's insurer can pay Bank if the rentee breaches a policy warranty and sue Debtor for the loss leaving Debtor without coverage.

- (iii) Notice of Cancellation. The insurance policies shall provide for at least thirty (30) days prior written notice of cancellation to Bank.
- (iv) Bank's Power to Collect Proceeds. Debtor, as principal, hereby appoints Bank as Debtor's attorney-in-fact with all power and authority necessary for Bank in case of an insurance claim to obtain, adjust, settle and cancel such insurance and endorse any loss payment or refund checks, drafts or instruments. Bank may apply the proceeds of any such insurance to the balance owing, whether or not due at the time of such application, and pay any excess proceeds to Debtor. In case of loss or damage to the Aircraft, Bank may intervene in any action between Debtor and any third party, including Debtor's Aircraft insurer, and Debtor agrees to cooperate with Bank in obtaining payment of Bank's interest.
- (v) Amounts of Coverage. The amount of all-risk property coverage for damage to the Aircraft shall be at least equal to the lesser of the then outstanding balance of the Note or the actual value of the Aircraft. The amount of public liability insurance shall be within limits commonly carried for aircraft of the size and type of the Aircraft for its permitted use(s).
- (vi) Aircraft Usage. Any application for insurance shall be consistent with the use or uses allowed under the Loan Documents. Debtor must deliver the Aircraft insurance policies or a binder which describes the permitted uses and coverage amounts prior to funding by Bank. Any renewals of insurance or applications for insurance to a new carrier must likewise be consistent with the use(s) permitted under the Loan Documents. No request for lease or rental of the Aircraft will be considered by Bank, unless such use is specifically listed on the Declaration Sheet of the policy or in an endorsement or a binder. Bank may also insist on seeing a copy of the lessee's or rentee's insurance coverage, which must be acceptable to Bank, before approval of such lease or rental.
- (vii) Debtor's Failure to Insure. In the event Debtor fails to furnish required insurance, Bank may purchase separate individual replacement hull physical damage insurance and, if necessary, public liability insurance and charge Debtor for the premium or rely on Bank's floater policy and not charge Debtor for any part of the floater premium. However, in the latter case, Bank's floater policy carrier may pay Bank and sue Debtor for any loss. If Bank buys separate insurance to be charged to Debtor, Debtor shall be entitled to all notice, cure and refund rights under applicable law. NOTE: In no case will Bank cover Debtor for public liability coverage for Debtor's use of the Aircraft. Such insurance can be obtained only by Debtor or a third party for such party's use or the use of a rentee arranged by such third party. If Debtor fails to furnish insurance as required, Bank will notify Debtor if any replacement insurance is to be added to the balance of the debt required to be paid.
- 34. TIMELY PERFORMANCE. Debtor must pay and perform on time.
- 35. SEIZURE. If the Aircraft is seized by law enforcement authorities for carrying contraband or other involvement in a crime or because the pilot was flying under the influence of alcohol, drugs or other illegal substance, Bank may take possession of the Aircraft from the seizing authority. If the seizing authority is a federal agency which is not able to prove within the federally-required time that Debtor was involved or informed of the unlawful use, Bank will surrender the Aircraft to Debtor at Debtor's request, if such activity is the only then current default. If the seizing authority is a state or local agency under the rules of which Debtor must prove Debtor's non-involvement in the alleged unlawful activity, Bank will return the Aircraft to Debtor when Debtor has established Debtor's non-involvement or been declared a victim by the seizing agency. If a seizing state or local authority has the right to forfeit the Aircraft, irrespective of proof of Debtor's involvement/non-involvement, Bank may elect to pay such release amount as the seizing authority may demand and obtain possession of the Aircraft or abandon its rights to the Aircraft and hold Debtor liable for the then balance of Debtor's Obligations. In any event, Debtor shall be responsible for all of Bank's reasonable expenses in investigating the seizure, obtaining possession of the Aircraft and storing and maintaining it pending a resolution of the dispute, if Bank provides such services.
- 36. DEFAULT. Debtor will be in default under this Agreement if any of the following happens: (a) Debtor fails to pay Bank any Obligations under the Loan Documents when due; (b) a material fact stated or omitted by Debtor in Debtor's credit application or the Loan Documents or in any financial statement given to Bank to obtain credit or subsequently given to Bank hereunder is untrue or tends to make such document misleading; (c) Debtor fails to perform an act specifically required by the Loan Documents, such as (without limitation) providing required insurance, inspection, maintenance and repair, or there is otherwise a

default under any of the Loan Documents; (d) a petition in bankruptcy or under any other insolvency, arrangement, reorganization or receivership law is filed by or against Debtor or Debtor enters into an assignment for the benefit of creditors; (e) the Aircraft is seized by a government authority and Bank's security position is in jeopardy; (f) Debtor liquidates, dissolves, or otherwise ceases doing business or allows its corporate or company charter to transact business to lapse; or (g) anything else happens that Bank in good faith may decide impairs its security in the Collateral for this loan or Debtor's ability to pay and perform the loan, such as a garnishment, writ of attachment or execution against any property of Debtor or any guarantor, levy being issued against funds or property of Debtor or any guarantor, or a material adverse change in the financial condition of Borrower or any guarantor.

- 37. REMEDIES. In the event of a default under Section 12, above, (a) Declare Obligations Due. Bank, at its option, may declare all or any part of the Obligations immediately due and payable in full, subject to any cure rights which Debtor may have in the state where this remedy is being used. If cure rights exist, Bank will notify Debtor of such rights, as required by applicable law.
  - (b) Other Remedies. Subject to applicable law of the state where a remedy is being used, Bank may use any or all of the following additional remedies:
  - (i) Require Debtor to make the Aircraft available and assemble all related Collateral used in or with the Aircraft, including updated logbooks, at an airbase selected by Bank which is secure and reasonably convenient to both Debtor and Bank. The base designated as the principal location of the Aircraft will suffice, unless such airbase is not at that time a secure place in Bank's reasonable opinion to store the Aircraft.
  - (ii) Take possession of the Collateral with or without judicial process and remove it or make it unusable.
  - (iii) Sell or otherwise dispose of the Collateral AS-IS WHERE-IS by public or private sale on the premises where the Collateral is located or elsewhere, if Bank elects to remove the Aircraft or related additional Collateral.
  - (iv) Collect any money due from third parties for use of or damage to the Collateral.
  - (v) Settle any liens or claims against the Collateral for storage, maintenance, repair, tax or other appropriate charge.
  - (vi) Exercise all remedies provided for in the Note.
  - (vii) If Bank elects to purchase insurance and charge it to Debtor, Debtor will pay for the reasonable cost of such insurance.
  - (viii) If Bank determines that the market for resale of the Aircraft is not favorable, Bank may elect to retain the Aircraft and waive any deficiency or accept a lesser deficiency. In lieu of resale, if allowed by applicable law. In such case, Bank will give Debtor any special written notice required by law, but in any event not less than 21 days notice.
  - (ix) If Bank elects to resell the Aircraft and related Collateral, Bank will give Debtor the notice and cure rights required in the state where the resale is to take place, but in any event not less than 10 days' notice.
  - (x) Bank will advise Debtor in its Notice of Resale how Bank plans to advertise the resale and what kind of repair, maintenance or make ready service it will perform prior to offering the Aircraft for resale. If Debtor requests additional resale preparation, Debtor will have to deposit full payment for such service with Bank in advance of the commencement of such work. Bank will decide whether to allow such additional work based on whether the value of such additional work is likely to add to the net resale value of the Aircraft. Any notice to be given following repossession by Bank to Debtor or other parties who sign this Agreement or the Note must be sent by ordinary mail, postage prepaid to the last address(es) Bank has for Debtor and any other obligor on the loan. If Bank elects to send any such notices by additional methods, such as certified mail, return receipt requested, or overnight courier, Debtor will be liable for the cost of such notices as well as for the cost of ordinary mail.
  - (c) Personal Property. (i) Removal Before Voluntary Surrender. Before voluntary surrender of the Aircraft to Bank, Debtor will remove all items of personal property not covered by Recital (D)(1) or (2) and, at Bank's request, will sign a statement acknowledging such removal by Debtor. (ii) Involuntary Repossession. If Bank repossesses the Aircraft, it will use its best efforts to identify any items of personal property left on or around the Aircraft and tell how Debtor may claim such property. If Debtor, within 45 days after Bank sends such notice, does not physically pick up such items or provide a representative with apparent authority verifiable by Bank to call for such items or provide a prepaid and addressed shipping container for Bank to use to return such items to Debtor, Bank may store such items at Debtor's expense, send them by overnight courier to Debtor and charge Debtor for the cost, or dispose of such items in any way allowed by law.
  - (d) Annual Inspection After Repossession. If, while the Aircraft is being held by Bank pending disposition, the time for an FAA-mandated annual inspection arrives. Bank will consider arranging for the inspection to be made by an FAA-certified mechanic experienced in inspecting, maintaining and repairing similar aircraft, if Debtor deposits with Bank in advance the cost of the inspection. In such case Bank will proceed with repairs indicated by the inspection report to be made by another FAA-certified mechanic, provided Debtor deposits the money with Bank for the repairs in advance. Bank may elect not to make any further repairs if Bank reasonably believes that the cost of such repairs will outweigh the added value of the repairs.

- (e) Expenses. Debtor shall be liable for and agrees to pay the reasonable expenses incurred by Bank in retaking, flying to a secure airport, storing, inspecting, testing, repairing, improving and reselling the Aircraft and any other Collateral. Debtor shall also be responsible for Bank's court costs and reasonable fees for any attorney not a salaried employee of Bank, if Bank refers this loan for any court or other action to retake possession from Debtor or any third party or for collection of money. These expenses, together with interest, shall, if allowable under applicable law, be added to Debtor's Obligations secured by this Agreement.
- (f) Application of Proceeds. Any resale proceeds shall be applied first to the expenses of resale, then to the other expenses in 13(e) above, then to late charges, then to accrued and unpaid interest and then to the unpaid principal balance of the Note.
- (g) Surplus. Any excess of net resale proceeds over then remaining Obligations shall be paid to Debtor.
- (h) Deficiency. Any deficiency balance still owing after application of net resale proceeds shall be paid by Debtor on demand, unless Debtor has a right to reschedule some or all of the balance under applicable law.
- (i) Remedies Cumulative. Non-Waiver. Bank may use any remedy or remedies singly or together. Use of one remedy does not stop Bank from using one or more other remedies. Waiver of a remedy on one occasion does not mean that the remedy is waived on another subsequent default.
- (j) Surrender of Aircraft Not A Waiver by Itself. Surrender of the Aircraft by Debtor shall not release Debtor or any other party liable for the Debtor's Obligations or who joined in granting a security interest in any Collateral for this loan.
- 38. GOVERNING LAW. (a) Validity. Except as provided below or as otherwise required by applicable law, the law of Nebraska shall govern the validity of this Agreement, without regard to Nebraska's conflict of law principles.
  - (b) Federal Perfection. Federal law shall govern the perfection of a security interest in the Aircraft and any engine(s) or parts that the federal filing will cover.
  - (c) Remedies. The law governing the use of any remedy under this Agreement shall be the law of the place where the remedy is to be used.
- 39. DEBTOR RESIDENCES, AIRCRAFT LOCATION. Debtor must notify Bank if any individual Debtor or any other owner of the Aircraft is about to permanently change residence or principal place of business address. Debtor must also notify Bank in advance of any change of name of Debtor, and, in case of a Debtor which is not an individual, any change of name of Debtor or change in state of incorporation or formation of Debtor. A change to another state or to a country or territory outside of the continental United States requires 30 days' prior written notice. Other address changes require at least 15 days' prior written notice. If there is more than one owner and each is moving, Debtor must inform Bank of each change of address. Debtor must also notify Bank if the permanent base of the Aircraft is to change. A copy of Debtor's notice must also be sent by Debtor to Debtor's Aircraft insurer.
- 40. JOINT AND SEVERAL RESPONSIBILITY. If this Agreement is executed by more than one Debtor, the obligations of all such Debtors under this Agreement shall be joint and several, except for the obligations of a party signing only as Other Owner to join in granting a Security Interest under Section 4 of this Agreement.
- 41. SEVERABILITY. Invalidity of any provision shall not affect any other provision of this Agreement,
- **42.**INDEMNITY. Should any third party make a claim against Bank for any harm from the Aircraft, attributable to Debtor or any third party, and not directly caused or ordered by Bank or its agents, Debtor will promptly either satisfy or settle such claims or indemnify and hold Bank harmless from any liability for such claims, including attorneys' fees and court costs. If Debtor cannot give Bank reasonable assurance of Debtor's ability and resources to defend against any such claim, Bank may control the defense and settle the claim giving such releases as it deems appropriate.
- **43.** AMENDMENTS. Neither this Agreement nor any of its provisions may be changed, waived or discharged orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver or discharge is sought.
- **44.**RESCUE. Should the Aircraft at any time be at risk of loss, such as on notice of approaching storm or flood conditions. Debtor shall take all reasonable steps to preserve and safeguard the Aircraft or authorize the airbase operator with which it is stored to do so. In particular, Debtor shall comply with all conditions of its Aircraft insurance policy relative to insured perils.
- 45. NOTICES. Except as otherwise provided by applicable law, any notice or demand given by Bank to Debtor in connection with this Agreement or the Obligations shall be deemed given and effective upon deposit in the United States mail, postage prepaid,

addressed to Debtor at the address of Debtor designated at the beginning of this Agreement and to any other party to this Agreement at such party's last address possessed by Bank. Actual notice of Debtor shall always be effective no matter how given or received.

- 46. BOOKS AND RECORDS. Debtor shall keep books and records showing the income and expenses of the business and records of each flight by the Aircraft as well as maintenance and repair records required to be documented in the Aircraft's logbook(s). Debtor shall obtain and retain all bills for equipment, service, parts, fuel, or other supplies for the Aircraft and proof of payment, whether by check or other medium. Such records shall be available for inspection by Bank on reasonable notice at the principal airbase of the Aircraft or at a reasonably convenient business office of Debtor or Bank at reasonable time(s).
- 47. HEADINGS. Section headings in this Agreement are for convenience only and shall be given no meaning or significance in interpreting this Agreement.
- 48. BINDING EFFECT. The provisions of this Agreement shall be binding upon the legal representatives, successors and assigns of Debtor and Bank's successors and assigns shall have the rights and remedies of Bank under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written and Debtor acknowledges receipt of two completed copies of this Agreement, one to return to Bank and one to retain.

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Anyone signing as Other Owner immediately above is not responsible for repaying the debt secured but joins in giving Bank a Security Interest in the Aircraft and to the extent applicable, in any non-aircraft Collateral

COUNTERPART NOTICE: This Agreement is signed in 2 counterparts. This copy is Counterpart #\_\_\_\_\_. Only Counterpart #1 may be used to give anyone Bank's rights under or a Security Interest in this Agree

State of California	1
County of MARIN	
On SEPTEMBER 22008 before me,	$\overline{A}$ $\overline{A}$ $\overline{A}$ $\overline{A}$
On JEVIEMBELL W before me,	Here Insort Name and Title of the Officer.
personally appeared	Name(s) of Signer(s)
ANN WAIRIMU MUNENE Commission # 1554626 Notary Public - California Marin County My Comm. Expires Feb 22, 2009	who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are-subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ias), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.  I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
	WITNESS my hand and official and
	WITNESS my hand and official seal.
	Signature
Place Notary Seal Above	Signature of Notary Public
Though the information below is not required by	law, it may prove valuable to persons relying on the document and reattachment of this form to another document.
Description of Attached Document	and realisationers of this form to another document.
Title or Type of Document:	967 SECURITY AGREEMENT
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Document Date: DEPEMBER 26"	Number of Pages:
Signer(s) Other Than Named Above:	
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Signer's Name:	Signer's Name:
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Signer's Name: ☐ Individual ☐ Corporate Officer — Title(s): ☐ Partner — ☐ Limited ☐ General	☐ Individual ☐ Corporate Officer — Title(s); ☐ Partner — ☐ Limited ☐ General
Signer's Name:  ☐ Individual ☐ Corporate Officer — Title(s): ☐ Partner — ☐ Limited ☐ General ☐ Attorney in Fact	☐ Individual ☐ Corporate Officer — Title(s); ☐ Partner — ☐ Limited ☐ General ☐ Attorney in Fact ☐ Attorney in Fact ☐ Corporate Officer — Title(s); ☐ Partner — ☐ Limited ☐ General ☐ General ☐ FIGHT THUMSPRINT OF SIGNER
Signer's Name:  Individual Corporate Officer — Title(s): Partner — I Limited I General Attorney in Fact	☐ Individual ☐ Corporate Officer — Title(s); ☐ Partner — ☐ Limited ☐ General ☐ Attorney in Fact ☐ Attorney in Fact ☐ Corporate Officer — Title(s); ☐ Partner — ☐ Limited ☐ General ☐ Corporate Officer — Title(s); ☐ Partner — ☐ Limited ☐ General ☐ FIGHT THUMSPRINT

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San Diego, CA 92101

### PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Sedgwick LLP, 333 Bush Street, 30<sup>th</sup> Floor, San Francisco, CA 94104. On August 25, 2016, I served the within document(s):

#### ANSWER TO SECOND AMENDED COMPLAINT

ANSWER TO SECOND AMENDED COMI LAINT				
		facsimile the document(s) listed above to the ched Telecommunications Cover Page(s) on this		
MAIL - by placing the document(s) listed above in a sealed envelope with perfect thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.				
	ing personal delivery of the document(s) listed ess(es) set forth below.			
OVERNIGHT COURIER - by placing the document(s) listed above is envelope with shipping prepaid, and depositing in a collection box for delivery to the person(s) at the address(es) set forth below via Federal				
Ralph J. Swanson, Esq. Dawn C. Sweatt, Esq. BERLINER COHEN 10 Almaden Boulevard, 11 <sup>th</sup> Floor San Jose, CA 95113-2233  Thomas J. Holthus, Esq. Julie E. Corriveau, Esq. McCARTHY HOLTHUS LLP 1770 4 <sup>th</sup> Avenue San Diego, CA 92101		Attorneys for Plaintiff BATTLE CREEK STATE BANK  Tel: (408) 286-5800 / Fax: (408) 998-5388 ralph.swanson@berliner.com; dawn.sweatt@berliner.com		
		Attorneys for Plaintiff BATTLE CREEK STATE BANK Tel: (619) 916-3419 / Fax: (619) 685-4811 tholthus@mccarthy-holthus.com;		

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 25, 2016 at San Francisco, California.

Marlene Adelman

icorriveau@mccarthyholthus.com

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